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The
Life and Speeches
OF
Thomas Williams

Orator, Statesman and Jurist

1806-1872

A Founder of the Whig and Republican Parties

By
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"The Life and Times of Thomas Smith, 1745-1809"

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With an Introduction by

HON. PHILANDER CHASE KNOX, LL. D.

United States Senator from Pennsylvania

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CHAPTER XIV

HIS SPEECH ON THE NEGRO IN POLITICS AND HIS ELECTION AS UNION MEMBER OF THE STATE HOUSE OF REPRESENTATIVES

1860

In the campaign which followed the nomination of Lincoln and Hamlin in June, 1860, at Chicago, Mr. Williams took a leading part for many reasons. It is not the purpose here to enter into the details of this teeming period, either in national life or in Mr. Williams' personal life. Let it suffice to say that he became spokesman for two movements, in Pittsburgh and the State, which may be described as follows: he was made the candidate of the people to fight the proposed repeal of the tonnage tax, which had been imposed on the Pennsylvania Railroad and was still unpaid, and was also selected as the Union or Republican or People's candidate to go to the Lower House of the Legislature, for, it may be explained, recent events and the policy of the national executive committee of the Republican party caused a very effective union of all the elements of opposition under the term the Union or People's ticket. Among the numerous speeches and addresses he made during the campaign probably the most notable was that delivered at Lafayette Hall, in Pittsburgh, on the evening of September 29th, on "The Negro in American Politics," just before the State election.¹ This was at once published and widely used, and it still carries the very breath and heart-beats of that great contest. Let it tell its own story:

FELLOW CITIZENS:—I trust it will not be supposed that my appearance here to-night has anything to do with the accidental

¹ Copy among the Williams papers.

fact that I am myself a candidate for an office which I have not sought—which I do not want—which involves great labor, and a responsibility which you have never before cast upon the shoulders of a representative—which is moreover without reward—and which it will cost me more than the wages of a Congressman to accept. If there is any body here who feels any difficulty in regard to myself, all I have to say to him is, that he can render me no greater personal service than by voting against me. If I had desired to advance my own cause, I should rather have avoided, than sought an occasion like the present. Your committee of arrangements was pleased to request me to address the great Convention which assembled on the Allegheny Common on Thursday last. The condition of my voice, as indicated by one or two previous experiments, compelled me to decline the invitation. Feeling, however, that it was my duty as a citizen to contribute my quota of service, as heretofore, to a cause which has interested me so greatly, and very naturally desirous, as I had labored in the preparation, to have some share in the triumph, I signified my willingness to address the people, at some length, in such a place as I could make myself heard without injury, and I am accordingly before you this evening for that purpose.

And yet I may be allowed to say, that on no past occasion have I felt the weight of a temporary infirmity more strongly, than in view of the stirring exhibition which I witnessed on Thursday last. As I cast my eye over the mustering squadrons of that bannered host, my heart beat exultingly at the evidence it furnished of the thorough awakening of the North. I thought I saw in it the omen, as well as the instrument of a great deliverance—and the exclamation rose involuntarily to my lips, "Thank God! there is a North!" Yes! the granite hills of Maine have just proclaimed it in the roll of twice ten thousand thunders, and the hills and valleys of Pennsylvania are about to echo back with a redoubled peal, the joyful shout—"There is a North." The years of our captivity are numbered. Our long and weary pilgrimage is about to terminate. Mount Pisgah is before us. In ten days more we scale its summit, and the promised land, which has so long fled before us, is at our feet.

Well, I knew that this would come at the appointed time. When I abandoned the field of politics, as I did, after the disastrous campaign of 1844, it was with the feeling that it was vain to struggle against the prestige of the successful party, and that the surest road to relief, although perhaps a very long and painful one, was through the excesses of unbridled power, and the full development and exposure of the principle which was so

obviously animating the victors. For this result I waited with the faith and patience of the aged Simeon. It came at last in the repeal of the Missouri Compromise, and culminated in the mortal struggle, which, commencing on the plains of Kansas, was transferred to the Federal Capitol, and there shook the Representative Hall of the people with treason, and dyed the floor of the Senate chamber with blood. The hour had then struck. The field of politics was flooded with a new light from the blazing dwelling of the inhabitant of the prairies. The veil had dropped from the faces of the combatants. The two great antagonistic interests which had been so long wrestling for empire under arbitrary names, had now come face to face, with visors up, in mortal embrace. The problem of American politics was now solved. The issue was at last directly made, and it brought along with it the inducement to renewed exertion, in the assurance which it furnished of a great deliverance. The time had now come to strike once more for freedom.

We failed, it is true, in the first of our struggles, because we were a raw militia, without organization, without discipline, without the knowledge of our strength, and under the influence of an unmanly terror, inspired amongst the timid by the bloody menaces of our foes. It was such a failure, however, as taught them to respect our strength and courage, and taught us confidence in our ability to achieve our deliverance whenever we chose to will it. We are now about to strike again, with the assurance that the victory will be ours; and I propose to stimulate your zeal by pointing out the issues, as I understand them, and awakening you to a proper sense of the importance of the struggle which is before you.

The territorial question, then, which stands out in such bold relief, which has divided the Democratic party itself, and around which no less than three embattled hosts are now contending, is in itself but the efflorescence—the out-cropping of a disease which has been lurking and fermenting in the bowels of the state, and was bound to find its way to the surface in some violent eruption like this. That disease is human slavery—the property of man in man—of one man in the labor, the bones, the sinews, and the muscles of another. Our ancestors found it here. They saw and knew that its existence was at war with the very fundamental principles of the Government which they were constructing, that slavery was no question of complexion, and that the same logic which made a slave of the black man, would be equally fatal to the freedom of the white. They were, however, practical men, and while they were stud-

ous to avoid the monstrous inconsistency of engraving the term "slave" upon the tables of their fundamental law, they endeavored to deal with the question in such a manner as would secure the conventional rights of the master during the brief period for which this anomaly was expected to endure. There was not one, I think, of all that illustrious band of patriots and sages that framed the Constitution who looked forward to its perpetuation, or regarded it otherwise than as a great and unmitigated evil—a standing reproach to our institutions—and a lasting impeachment of the sincerity of the men who framed them. That it should ever come to be regarded as a national blessing—as a great instrument of civilization—or as a missionary agent in the Christianization of a heathen people, was the buried thought of a superstitious age, with the mould of more than three hundred years upon it, which was reserved for resurrection at the progressive era that has just dawned upon ourselves. They supposed, however, that they could reconcile the two great antagonistic conditions of humanity, and so blend them together as to avoid a conflict. They were mistaken. The task was one which exceeded their powers. The great law of liberty was not to be thus compromised with impunity. There was an avenging Nemesis on the trail of this unnatural union. The result has shown that William Pinckney was right, when he lifted up his voice, half a century ago, in the Legislature of Maryland, in bitter reprobation of the unholy alliance, and uttered those memorable words which are still so familiar to the ear of boyhood—"The rose and the bramble may grow in mutual contact, but liberty and slavery delight in separation."

I do not say that the institution of slavery is not consistent with the love of liberty, and with a high development of that lofty and chivalrous spirit, which is the best guarantee for the independence of nations. The lessons of history teach us, on the contrary, that the proudest and most jealous of governments were precisely those, where the people were divided into the two great classes of masters and slaves. Those governments, however, though republican in name, were but oligarchies in effect, with obvious and irresistible tendencies in the direction of the establishments which broke up the power of the monarchies of mediæval Europe, and depopulated their territories, and impoverished their soil, by the forced labor of serfdom or villenage. And such, I undertake to say, are precisely the fruits of this patriarchal institution in all those parts of our confederacy where it prevails. It has produced a race of men of great wealth, of high culture, of indomitable pride, and of undoubted courage, who are the aristocracy of the State. It has produced

another, however, which is only fitted for a condition of thralldom; and that is not a black race, but a white one. Where labor is done by slaves, it is not considered honorable for freemen—just as trade itself involved a forfeiture of rank among the French noblesse two hundred years ago—and, as a consequence, the distinction between the poorer classes and the slave himself, is one of color only, which is slowly and imperceptibly fading away under that process of amalgamation, which is falsely charged on us, and true only as to our accusers. If there be any difference, it is in favor of the black man. There is no portion of our slaveholding communities, which is so ready to lynch a Yankee schoolmaster, as the very "poor trash," whom the negroes themselves despise.

But this is not all. Although a domestic and *peculiar* institution, as they are wont to call it, until it aimed to become an extra-territorial and general one, its effects have not been confined to the communities in which it exists. While we are denied the privilege of meddling with it, it has never ceased to act upon ourselves. The very sense of antagonism to liberty which it has produced, has been ever present in the mind of the slave owner, from the foundation of this Government. A community of interest has held them together upon all occasions, and operated as a flux to fuse down the most discordant elements into the most perfect harmony. If we, of the Free States, have sometimes forgotten that there was a common bond to unite us, because we have no institution that has the advantage of being *peculiar*, it has not been so with them. Democrat, and Whig, and American, they have been ever one as against us. Scarcely a Free State has been allowed to come into this Union, without a black duenna at her side—without being covered by the dark shadow of another, which recognized a property in slaves. No matter how rapidly we might grow under the benign influences of free institutions, it has always been the policy of the slave owner to countercheck our weight in the Senate, and to neutralize our enormous, but healthful development, by the sort of Polish veto, which enabled him to tie the hands of the majority, and deprive it of all powers of legislation. The consequence has been, that they have controlled the policy of the Government throughout, and kept it oscillating and fluctuating from one system to another, just as the interests of slavery were supposed to lean, whether for or against a tariff—for or against internal improvements—or for or against a bank—but always true to this one magnetic pole. By the same power of combination, they have seized upon all the important places in the Government, and made the question "is he in favor of slavery?" the test of official qualification, as

well as of party orthodoxy. They swarm at the Federal capital. They control all the departments. They hold the Supreme Court, and with it, the power of moulding the Constitution itself to suit their views. They fill the army and the navy. They manage every thing, and have managed every thing so long, that they have come to think that they have a divine right to govern us, and to declare openly, that if they cannot be allowed to rule the Democratic party, and through it the nation, they have a right to secede, and break up both. They may be excused, perhaps. It is a fault inherent in the false relation which they maintain. We know that it is productive of bad habits of thought. We have the testimony of Jefferson himself, that it engenders arrogance, and fosters a spirit which is fatal to the education of the young. The man who is accustomed to rule black men, will soon come, by a very natural process, to the conclusion that he has a right to rule white ones. It is, of course, galling to the pride of a man so educated, that he should be compelled to submit to the rule of a class which he despises. If the association of compulsory labor with a black skin has degraded the black man here, it has reacted equally upon labor itself, so as to degrade it in their estimation; and every concession made by the North to the threats of disunion—every expression of unmanly fear on our parts—has only served to confirm the slaveholder in the opinion, that we are but sneaking poltroons, who may be bullied into submission, whenever we cannot be bought or bribed. I am free to confess, as a Northern man, that we have done all we could to encourage the formation of this opinion, and the result has been the scenes of violence we have witnessed, and the scorn and contumely, to which so large an expression has been given by Southern presses and Southern orators. If we had stood up on all occasions like men, they would have respected at least, if they did not fear us, and we should have heard no whisper of revolt, no loud and treasonable menaces of disunion. Our repeated submissions have only increased their arrogance, and enhanced the extravagance of their demands. Our attempts to purchase peace by pusillanimous concessions, have been but the bait thrown by the Siberian mother to the hungry wolf, which was no sooner devoured than he was again upon her heels. The spirit of slavery is not to be satisfied or appeased by any amount of sacrifices. The Democratic party of the North has bankrupted itself for this purpose, and the return is—what it deserved to be—ingratitude and ruin. Its leaders have sounded the very base string of servility, and what has been the result to themselves? It may be read in the fates of Buchanan and Douglas both. They have

failed to satisfy this exacting and insatiable interest, by the humblest of services and the deepest of humiliations, and have only drawn upon themselves the contempt and hatred of their task masters. With these men on their knees before them, they look in amazement upon the present condition of political parties in the North. It is, in their eyes, no better than a servile insurrection. The first impulse, of course, was to correct it with the lash, or the bludgeon. The Northern overseers had failed to crush out the revolt. The master then took the matter into his own hands, and the blood of Sumner flowed upon the pavement of the capitol, and the whole South approved and cried, "Well done!"

And now let me inquire how far this issue has entered into the present struggle. Mr. Douglas complains that it is the negro who stands in the way of all beneficent legislation, and of every measure of relief which the interests of Pennsylvania demand. I agree with him there. It is the everlasting negro who thrusts himself, on all occasions, in the way of progress, and hangs like a drag upon the wheels of the national machine; and it is on the question of his place in the Government, that the Democratic party is divided, and Judge Douglas is himself a candidate. It is on that question, too, that his speeches are exclusively made. I respond cordially to his sentiment, that we must get rid of the negro. The only difference between us is, whether this shall be done by shutting him out entirely, or allowing him to have his own way, and to go where he pleases. We have tried the latter expedient without success. Judge Douglas thinks like the "unjust judge," that it is the only way of escaping the annoyance. Upon the question as to his range, he affects a sublime indifference here, while he boasts in the South, of having added to it a degree and a half of latitude. He does not care whether the negro is voted up or voted down in the territories, so long as he is the lord of the ascendant in the States. He claims only that he shall be allowed to have his chance, and that he shall be let alone by the Government, while he stands himself upon a platform, whose four corners are borne up on the shoulders of the slave. It is not Democracy that he represents. That had lofty aspirations. It was never indifferent upon a question of slavery or freedom. This is but the monstrous birth, engendered of the worse than incestuous connection between the virgin daughter of the Revolution and the slave. It has rent the entrails of the parent in the conception, and the mother that bore it might well start back at the apparition, like Sin in the sublime allegory of Milton, and shriek out—death. It shows fair above—

"What seems its head the likeness of a kingly crown has on;
It ends below in many a scaly fold, voluminous and vast."

There is no feature of that offspring, variant from our own, which does not disclose the monstrous parentage. There is not a plank peculiar to that platform that has not a negro under it. There is not even a sound timber in its construction, which does not give way when the negro sets his heavy heel upon it. Let us rip up a few of them, and see whether we cannot detect, and drag him to the light.

The Republican confession of faith reiterates, in the first place, the terms of the great Declaration, and proclaims that "the Constitution, the rights of the States, and the Union itself, must and shall be preserved." This is the great cardinal principle, which flames in its forehead like the meteor light of an advancing railway train.

The Democratic platform, ignoring the Declaration and the Union both—the one, of course, as heterodox, and the other, I suppose, as of doubtful value—asserts its trust in the people, and declares that the Government is one of limited powers, that the grants made therein are to be strictly construed, and that it is inexpedient and dangerous to exercise any powers that are doubtful.

To the doctrine that this is a Government of limited powers, there is no objection. That they are to be strictly construed, however, is a principle which is only invoked when any truly national object is proposed. It has never been found to stand in the way of any measure which was intended to advance the interests of slavery. There, the interpretation has always been latitudinarian to a fault. When Louisiana and Florida were acquired, the constitutional barrier gave way. When Texas was annexed, the same drama was rehearsed. And now, when Cuba and a route over the isthmus are to be secured, we find these very consistent gentlemen again knocking in the head, in this very platform, the cardinal principle on which they profess to stand. How well do they realize the creed and politics of that old Federalism, which, as they so eloquently enunciate, "conceives no imposture too monstrous for the popular credulity!" They invent the sin, which the proud old Federal party would have scorned to commit, and then father it upon them. This plank is a sound one, if it were not so elastic. It is too weak for the tread of the ponderous African.

The next point in the Republican platform, is a denunciation of the extravagance and corruption of the Administration, with a declaration that while providing revenue for the Government, by a duty on imports, sound policy requires such an adjust-

ment of these duties, as shall encourage the industrial interests of the whole country.

The Democratic platform declares, on the other hand, that sound policy forbids the general Government from fostering one branch of industry to the detriment of another, or from cherishing the interests of one portion of our confederacy at the expense of another—with a recommendation of the most rigid economy, and a limitation of the revenues to the necessary expenses of the Government.

To understand these dark sayings—this ambiguous outgiving of the two-faced, and now two-headed oracle, we must have recourse to the political philosophers—the cotton doctors—of the South, who frame all the platforms for the faithful—for the interpretation. The idea is, that the encouragement given to manufacturers, and through them, as well as more directly, to the free labor and agriculture of the Northern States, is a tax upon those whose labor is done by slaves, and who grow no grain for their own consumption. They insist that they pay all the duties, because, as they allege, they have to pay you a higher price for all that you sell them, while their staple, cotton, is the principal export of the country, and they wish to buy your grain and pork at their own prices, while they purchase their goods from their British customers. They want no protection themselves, and insist that if you are protected, it must be necessarily at their expense. To impose a duty, therefore, for the protection of any branch of industry, is, in their view, to foster one branch to the detriment of another, and to cherish the interests of one portion of the country at the expense of the residue. They once thought differently, and then protection was the order of the day. When they changed their minds, the Democracy of the North changed with them, and the American system became unpopular and obsolete. And this is the doctrine which Northern Democrats are made to indorse at the bidding of the men, who own their laborers, and think that capital ought always to own them! If they do not already own their patient followers in the North, who shoulder such burdens as this, and do their work even more cheerfully at public conventions and in Congress, than it is done by their slaves in the cotton field, it is not for the reason that they are not quite as faithfully served by them. I beg those who hear me, to remember that slavery is not merely a question of color, or of menial or predial—domestic or agricultural—service. The slave may be a white man, and the labor may be done in the newspaper, in the convention, on the stump, or at the ballot-box. The only difference is—and it is an important one—that while the white slave is never so

much respected by his master as the black one—because his condition is a voluntary one, while that of the negro is not—he enjoys, at least, the privilege of asserting his freedom, and re-assuming his abdicated manhood, whenever he thinks proper, without borrowing the aid of an underground rail road. The tariff is a question of free and slave labor only. The right to protect our own industry was one of the first privileges asserted upon our emancipation from the yoke of the mother country. It continued to be our policy until it came to be regarded as at variance with the interests of the slave owner. It was, at one time, the almost unanimous sentiment of the Democracy of the North. There was no difference of opinion on that subject here, at all events. The right won for the freeman in the war of Independence, went down, however, in the conflict with the labor of the slave—and this plank, which is a central one, is resting directly upon his shoulders.

The very grave recommendation, however, of “a most rigid economy” in the face of an expenditure of some eighty millions of dollars per annum, and with an administration of the same party, the most extravagant, corrupt and profligate that this nation, or the world itself, has ever seen, is not the least amusing feature of the anti-tariff platform. Its explanation is to be found, however, in the suggestion of a limitation of the revenue to the strictest necessities of the Government. The idea is to avoid, by all means, the necessity for a tariff, by expending nothing upon our rivers or our lakes—nothing to settle up and improve the boundless territories committed to our charge, as the future home of countless millions of freemen—nothing for any other purpose under heaven, except to acquire new territories for slavery, as though it was the mission of this Government, not “to secure the blessings of liberty to ourselves and our posterity,” but to forge chains for unborn generations, and to hang the black cloud of human bondage over half a continent! The most rigid parsimony to avoid a tariff, unless the interests of slavery can be best promoted by the most profuse expenditure. Then money is no object. An expensive war in Florida—another in Mexico—assumption of debts in the case of Texas—a hundred millions, or a stupendous act of piracy, if necessary, to secure the gem of the Antilles, which is supposed, like another dragon, to guard the entrance to the garden of the Hesperides—all this, purchased by the blood, and levied upon the labor, and taken from the pockets of the Northern freemen—as is the support of the army, which is kept up at our expense to overawe the slaves, and to furnish an asylum for the cadets of the aristocratic and labor-hating families of the South—is nothing with these

rigid economists, who are so solicitous to limit the revenues to the absolute necessities of the Government. All these are necessities amongst those strict constructionists, who cannot afford the money, or find the power in the Constitution, to deepen a shoal upon your lakes, or clear out a bar or a snag from your great rivers, though the lives of all the boatmen, and the merchandise and produce of all the North, were to depend on it. What is the value of a free white laboring man in the North, in comparison with the black chattels which sell for \$1,500 apiece? Why, there was no difficulty in finding authority in the Constitution for paying for a whole cargo of negroes in the *Amistad*! We shall have a bill, I suppose, to foot by and by for the ebony chattel that was shot or drowned in the Potomac on the occasion of the John Brown raid. As to a boatman, however—one of your Northern mud-sills—a piece of the stuff out of which we propose to fashion a President—he is worth nothing unless he is owned by somebody, on the principle of the Democratic candidate for the Vice Presidency, that capital should always own labor. Well, if a working man must have an owner to give him value, we will even play the master ourselves for once, and admit that "honest old Abe" belongs to us. I trust, however, that nobody will be tempted by what I say, to go over to the enemy, in order that he may have a price set upon his head.

The next point I shall consider, is that which relates to the public lands. On this, the platform of the Republican party embodies a declaration in favor of settlers' rights, and of the passage of the homestead bill, with an emphatic protest against the haughty assumption of the Southern oligarchs, that these settlers are no better than paupers. The Democratic platform, ignoring this question entirely, proclaims that the proceeds of the sales are to be sacredly applied to the national objects specified in the Constitution, and protests vigorously against any distribution amongst the States, as impolitic and unconstitutional.

There is nothing, of course, in favor of a homestead bill. The provision of homes for the settlers, is one of those objects which have not been "specified in the Constitution." That is a provision for the multiplication of freemen only, and is, of course, in their judgment, entirely sectional. If the object had been to provide slave homes, instead of free ones—not lands for the landless, but "niggers for the niggerless," that would have been indisputably national. To distribute the proceeds among the States for purposes of education or internal improvement, or to apportion out the lands themselves for the endowment of agricultural colleges, is equally objectionable, for the same rea-

sons. Schools are for freemen, and highways an inconvenient facility for negroes. For any purpose, however, it would impair the revenues, and increase the necessity for a tariff.

But why is it that the Democratic party is so extremely averse to the distribution of the public lands, even among the States themselves? It was not always so. Is it because there is anything unjust in doing again, what was done before under the administration of General Jackson? The thing seems equitable enough, even without reference to the terms of the cessions themselves. Can any Northern man imagine any possible objection to it? Here is a fund sufficient for the education of our posterity for all future time, as well as for the improvement of all those natural highways, and the construction of all those artificial means of communication, which are so essential to develop our resources, and to bind this Union together with "hooks of steel." The doctrine of their platform is alike hostile to the grants made to the new States for rail roads and schools, as it is to the endowment of agricultural colleges for the old ones. Are these objects which are worthy of the fostering care of the Government? Nobody here will venture to deny that they are. How is it, then, that this language has found its way into the Democratic platform? It is nothing but the shadow of the everlasting negro which falls again across our path, and darkens the fairest prospect that Providence has ever opened to the vision of man. To give away the lands to actual settlers, is to make Free States. To educate the people, is to make free men. To provide them with commercial facilities, is to stimulate their growth. To divert these revenues from the Federal treasury, would be to create a necessity for additional duties, or, perhaps, to make it necessary to tax the negro himself. It is, therefore, another tariff question, and the negro again thrusts forward his woolly muzzle to frighten us from our propriety, or pops up through the platform floor, like the ghost of Banquo, "to push us from our stools."

The next noteworthy point in the Republican platform, is an affirmation of the right of Congress to make appropriations for river and harbor improvements, to accommodate an existing commerce, and to protect the lives and property of those that are engaged in it. The Democratic platform in its corresponding clause, asserts that the Constitution does not confer on Congress the power to commence and carry on a general system of internal improvements.

The Republican doctrine was intended only to place the interior and the Great West, which have been so long neglected by the Government, upon a footing of equality with the seaboard

States; and to make all this sure, they have singled out a Western boatman, whose business it will be to see that their interests shall not be ridden down hereafter, by affected constitutional scruples in regard to the power of Congress in the premises.

The Democratic doctrine involves a condemnation of the whole practice of the Government from the beginning. A truly national man, imbued with the right spirit, proud of his country, as every American ought to be, and keenly alive to all its susceptibilities, would be inclined to spare no means which might be required, to develop its great resources, and to make it what a beneficent Providence, obviously intended it to be when the basins of its great inland seas were hollowed out, and its mighty rivers showered down upon its plains. These were the views of the Fathers, whose bones are now reposing under Southern soil. These were the sentiments of that liberal, broad-minded, and truly American statesman—the last of the race of mighty men of the South—who now reposes beneath the oaks of Ashland, rejected of his own, because his heart was too big to be circumscribed by State lines, and his vision too far-reaching, to encourage either the perpetuation of the curse of human bondage at home, or its diffusion over the free territories of the republic. But the Fathers are dead and well nigh forgotten, or remembered only to be condemned, while the party which claims to be exclusively national, and to follow them by a sort of apostolic succession—but which its reputed fathers would not even know—has come to enter its solemn protest against all expenditures which look to the good of the whole Union. And why is this? Is it because Northern men are of the opinion that these objects are not truly national? It is the negro again who lays his hand upon the shoulders of the nation, and bids it stop. These things cost money, and do not help slavery. They will deplete the treasury, and it must be replenished by additional duties. It is a tariff question again. The negro must have his way, as usual, and the Northern Democratic leader bows his head, and whispers softly, "As you please."

The next point upon which the platforms differ, is that of a rail road to the Pacific; and this is, of course, an internal improvement question also. On this question, while it seems to be admitted on all hands that the interests of the country require its construction, the Republicans say, that the Government ought to render immediate and efficient aid to it; the Douglas Democrats pledge such constitutional government aid as will insure it at the earliest practicable period; and the Breckinridge Democrats undertake to use every means in their power to secure the

passage of some bill, to the extent of the constitutional authority of Congress, for the same purpose.

Now here is a virtual surrender of the position previously assumed by them, under the pressure of a strong public opinion in the North, and by way of bid for the votes of the Pacific slope. But mark the caution with which these Democratic conclaves dispose of this great question! See how gingerly they deal with it. The Douglas men are willing to pledge "such constitutional aid as will secure it." They have already declared, however, that the Government has no constitutional power to commence and carry on a general system of internal improvements, and that the proceeds of the public lands ought to be sacredly applied to "the national objects specified in the Constitution." The Breckinridge men, more cautious still, are only willing to pledge their efforts to secure the passage of some bill, to the extent of the constitutional authority of Congress, for the same purpose. What is the meaning of all this reserve? Is the whole thing intended as a cheat and a juggle, or have they felt the utter incompatibility of this pledge with the whole spirit of their platform? They made it solemnly, but reluctantly, at Cincinnati. As soon as they had secured the vote of California, upon the faith of it, it was consigned to the limbo of vanities—sometimes called "the paradise of fools"—to be drawn forth again, and again violated, as it was before. The idea that the South will ever consent to so large an expenditure as it would involve, unless it was for an exclusively Southern road, is at war alike with their practice and their principles. Their subsequent declaration in regard to a free passage across the Isthmus, shows that they do not seriously think of an internal communication by rail road between the Atlantic and the Pacific States. If it was a question as to the acquisition of Cuba, or the purchase of another slice of Mexico, they have shown us already that the expense would be no consideration. To span the continent with an iron highway would be a new phase in their history. It would be as fatal to the negro, in their view, as it is likely to prove to the Indian, and the grizzly bear, and the buffalo. It will bleed the treasury, at all events, and the negro who sits upon the strong box, again shakes his ambrosial locks, and thunders, "No."

The next plank over which we stumble has relation to our foreign policy. On this, the Democratic conventions agree in affirming what they call the Monroe doctrine; asserting the right to control the inter-oceanic passage across the Isthmus—the duty of maintaining an ascendancy in the Gulf—and the policy of acquiring the island of Cuba, on such terms as shall be honor-

able to ourselves, and just to Spain—an improvement, by the way, upon the morality of the Ostend Circular.

This plank is all ebony. No one can fail to see the negro here. It points all southward. Newfoundland, Nova Scotia, New Brunswick, the Canadas, the Hudson's Bay territories, Vancouver's Island, all British America, can find no place in it. Instead of enlarging in that direction, and seeking an alliance with men of our own race, lineage and faith, the Democracy falls back on the Aroostook and the St. Johns, or subsides amiably from "54° 40' or fight," down to 49°, and free trade with our ancient enemy, while it turns lovingly to the embrace of the cruel Spaniard and the unhappy slave. All that is wanted to round this plank into perfect fullness, is a declaration in favor of the opening of the slave-trade. That will come, however, in the train of Cuba. It has come already upon the coast of Florida. The South defends and a Democratic administration winks at it. Cuba will furnish an outpost—an intermediate missionary station, in the great process of evangelizing the African tribes. Her harbors have always been the cruising grounds of the slaver and the buccaneer. The sullen plunge of the dark-skinned African mother, victim of the horrors of the middle passage, and the bubbling cry of the strong swimmer, who was hurled from the corsair's deck, have alike sent many a tell-tale ripple to her accursed shores. What fitter entrepot for the commerce in human flesh? But do the Democrats of the Free States desire all this? No, God forbid! There is not a right-minded man amongst them, who would not shrink from the naked proposition with undissembled horror. How, then, has it found its way into their platform? It is because the slave owner was its architect, and their own representatives have betrayed them.

The next point on which the platforms differ is that which relates to the extension of slavery into the territories. This is the complement of the declaration in regard to the public lands. And here the negro himself, who has been skulking underneath the platform, steps boldly and squarely upon it, and claims his share of them. His share, however, is always a monopoly. If he takes any, he appropriates the whole, because he excludes the freeman. As in the case of Abraham and Lot: "The land is not able to bear us both, that we may dwell together." The Republicans, standing upon the doctrines and practice of the Fathers, and claiming, like the Samaritan woman, that they have also "Abraham" for their father, say that he has range enough. The Democrats insist that he is a privileged traveler, a sort of cosmopolitan, who must be allowed to choose his own domicile. His right to do so I shall examine hereafter.

Here, then, is the platform of the party, with a negro under every plank of it, which differs essentially from our own. Distil it, and evaporate it, and there is nothing left in the bottom of the alembic, except the negro, who calls us "black," just because we will have nothing to do with him. The time was when every principle which the Republican party now proclaims, was held and maintained by the Democratic party itself, from the tariff down through the whole chapter of variations. The reiterated declarations of the Legislature of Pennsylvania, on the subject of the tariff and internal improvements by the general Government—the unanimous protest of the same Legislature against the admission of Missouri as a slave State in 1819—and the equally unanimous declaration of the Democratic convention assembled at Pittsburgh, in July, 1849—are some of the evidences of it here. The Democrats of the North have carried these opinions, one by one, and laid them down, along with the great majority principle itself, at the feet of the slave power. Upon that shrine of abominations—upon the polluted altars of that horrid Moloch—they have offered up every thing that was demanded, until they were called upon to pass their own children through the fire, upon the plains of Kansas. It made no difference to the Northern leaders what was the demand. They never complained that it was too large. They looked for personal rewards in proportion to the extent of the submission. The people were patient and docile, and accustomed to submit to every thing, because they were honest, and suspected no fraud in others. It was not until they had come near flinging their riders, in 1856, that the inquiry came to be made, How much will they bear? It was in the Charleston Convention, that was first heard the unusual language, "We have no objection individually to this or that doctrine, but we fear our people will not submit to it." It was the same feeling precisely, which checked up the fiery Douglas on the Lecompton issue. He had bidden high for Southern votes. It had cost his party many States. He found that he could bid no higher, without the sacrifice of all the Northern ones. He now endeavors to emulate the feat of the circus rider, by bestriding two horses of very different mettle and action, at the same time. To span the gulf which lies between them, would require the legs of a Colossus, and his are said to be none of the longest. It is too late, however—"too late"—as a sepulchral voice exclaimed from the galleries of the French Chamber of Deputies, when it was proposed to proclaim the Duke of Berri as their king. The wedge which he drove through the Missouri Compromise, has rent these two interests in twain, as by an earthquake shock. Kansas, bathed in blood,

and smoking with the embers of burning dwellings, has drifted North, while the architect of all this ruin—the great tempter, who plucked the forbidden fruit, and in an evil hour persuaded the South to eat at the expense of faith and honor—is floating, like a polar bear, between the separating floes. It was his destiny, apparently, under Providence, to precipitate this crisis—which was sure to come, at all events—by an act of transcendent perfidy. Without taking any thing, even a "barren sceptre," by the act, he has been but the unconscious instrument of a great deliverance. I am inclined to thank him, therefore—not for the motive, but for the act. It disenchanting the North. It showed them what Democracy had now come to signify. It severed the invisible chain which bound the Northern Democrat to the car of this Juggernaut. It sealed the doom of the slave power. The blood which smoked to heaven from the face of the broad prairie, had not been shed in vain. Nor was it in vain that the heart of that old man, whom God Almighty seems to have raised up for this especial purpose, was hardened, like that of Pharaoh, to the cries of a suffering people. The whilom great Democratic party now lies wounded, bleeding, distracted, wrecked, upon that very question to which it had sacrificed its whole hereditary wealth of principle. By a sort of poetic justice, it dies of the negro, and by its own right hand. The strong man perishes in agonies and convulsions, clutching at the falling rein, despairing, blaspheming, cursing the day in which the nation was born, and calling down the red lightning of heaven upon this once glorious Union, which he is no longer to rule. And now, the apostate President, if he ever hated the party which has taken him to its bosom, as he is said to have done, may exult in a glorious revenge. He will see it in its grave on the fourth of March next, helped thither by his own hand, and covered and overwhelmed by the double damnation of the traitor and the parricide.

And yet we are told, that it is we only who are always thrusting the negro into the foreground, and interfering with the property and the social rights of our Southern brethren. For my own part, revolting and unjust as is the condition of slavery, I am free to own that its prevalence here, and the habitual association of the black man with the idea of dependence and subjection, had blunted my own perceptions of the wrong which he was suffering. I was educated, like other Americans, not to look upon him in his humanitarian aspect, but in his political and economical relations, as a working machine, and an element of political power. I had made up my mind that if the South loved slavery—if it was satisfied that its material interests were advanced by it—it was not our business to interfere, even in the

way of advice. Although dissatisfied with the unequal bargain which gave to the Slave States a representation on the basis of property, without any practical equivalent to us—if it were possible to imagine an equivalent—and by a singular anomaly, erected that which was a source of physical and moral weakness, into an element of political power, I was not unwilling to compromise, upon the understanding that if the negro would let me alone, I would not disturb him. The experience of this country has, however, shown that the negro is not to be disposed of in this way. He is essentially aggressive. From the foundation of this Government, he has never been lost sight of by his owner. I have already shown you that there was a principle of cohesion there so strong, that, however divided upon all other questions, those questions were all sure to be subordinated to this, and that, by these means, a little oligarchy of some 350,000 men had been enabled to take and hold the possession of this Government, and to control its policy, in the face of more than twenty millions of freemen. It is idle, therefore, to say that the negro is a staple commodity of ours, when it is through him, and by him only, that the South has governed us. It is only because we have ignored him that they have succeeded so effectually in doing it. When he encroaches on our territories, and we resist, we are denounced as sectional, because it is the Free States only that unite with us—although it is well known that they will not allow our opinions to be even promulgated amongst them—while the fact that the Slave States are united under this iron rule of unconstitutional exclusion, is taken as the evidence that they are national! The debates in the last Congress, and the schism at Charleston, will show that the everlasting negro has become an apple of discord at home, and broken the peace and harmony of the great Democratic family throughout the nation—and now they are sectionalized like ourselves.

But this is not all. The events of the last few years have shown that we have an abiding political interest in the question of negro slavery. So far as it may affect the future of this great Republic—so far as it is likely to require the power of the nation for its protection—it is our question as well as theirs. The slaveholders have spared no pains within the last few years, to show us that the slavery of the black man is inconsistent with the freedom of the white man. In its infancy its evils were not so apparent, although it is known to have disabled some of the Southern States from furnishing their proper contingents to the war of the Revolution. It stands confessed now by the unanimous voice of the South, that there is no security for the master except in the

ignorance of the slave—in the suppression of all knowledge—and in the denial to the citizens of other States of all freedom of speech on that question. It may be that the apprehensions of the master are well grounded. I am willing to admit, if necessary, that large allowances are to be made for the panic terror occasioned by the mad foray of John Brown, as well as for that which is now prevailing so extensively in Texas. They are perhaps authorized by the condition of society in both those States. If it be true, however, what a state of things is that which we are asked to extend? It seems to me, that these facts admonish us of the necessity of laying our hands upon this dangerous institution, and preventing its further diffusion throughout this nation. To allow it to spread, and to admit other States into the Union upon the same terms, is to render ourselves responsible as a people for its encouragement—as the people of the North, who assisted in the original importation, are already claimed to be. It has taken possession already of the fairest portion of our continent. It cannot endure forever. Those who think it can have no end, because it seems to have no beginning within the historic period, forget that the slavery of the black man, except perhaps so far as it is attested by Egyptian monuments, is comparatively modern, and that it is only a few centuries—the briefest span in the history of our race—that have witnessed the emancipation of the great families of men who now govern the earth. The half of England would be in bondage yet, if its courts had been animated by the spirit which now rules the Supreme Court of the United States. It must have an end, unless there is something peculiar in the complexion of the negro to render it impossible—and that is indeed the grand difficulty. God forbid, however, that we should be instrumental in its propagation!

But how is this great question to be settled? It is even now like one of the plagues of Egypt. It overflows our land, and finds its way into our kneading troughs. It interferes with our labor—it spurns the right of petition—it denies to us the privileges of citizens in the States where it prevails. While it combines itself, it threatens us with Sedition Laws, to be administered by slaveholding judges, for the purpose of repressing all combinations amongst freemen, to arrest its progress, and protect themselves. It looms up in the dim and shadowy future with dimensions still more gigantic. This pitchy cloud warping up on the Southern wind, at first no bigger than a man's hand, already hangs over our subject realms, like night, and darkens all the land:

"A multitude like which the populous North
Poured never from her frozen loins, to pass
Rhene or the Danaw, when her barbarous sons
Came like a deluge on the South, and spread
Beneath Gibraltar to the Lybian sands."

A tempest is in its sulphurous womb. What a problem does it make, to be solved by our posterity! At the present rate of increase, another century's sun will look down on *sixty-four millions* of negroes in the United States. What is to become of them and us? Re-open the slave-trade—as you may do, if slavery is right, and will if it is not checked—and what an additional deluge will be upon us? And what is to be the result? What sort of government will it require to hold all these slaves in subjection, if it can be done at all? Certainly not a Republican one. But they cannot be so held. There will be an exodus sooner or later, over the rivers, and through the savannahs of the South-West, marked, it may be, with scenes before which the puny exploits of the border ruffians of Missouri will pale. The bleaching process which has been going on in Virginia, "Mother of States and of Statesmen," now descended from her original rank, and converted with elements of wealth unequalled in this Union, into a mere breeder of slaves—that process which drew the attention of La Fayette, when he returned here in 1824—will not answer. If the efforts of man could succeed in establishing a permanent intermediate variety, the product of that union, violating a law of nature, would be on hand to lead their hosts, and avenge the wrongs of the black man. The infusion of white blood, without conveying the privileges of white men, will be fatal to all subordination. And this is, perhaps, the process by which the great question is to be solved. There is always an avenging Nemesis upon the footsteps of a great wrong. Providence works by processes, which, though sure, are always so slow as to blind the observer to the laws by which they are effected. The slave has already blasted the soil wherever he has set his foot. It was the boast of the destroying Hun, that no blade of grass ever grew beneath the feet of his war horse. So it is with the slave. The verdure perishes where he treads, and the earth refuses to give forth its increase. His march is like that of the army worm, in search of new pastures to devastate and destroy. And this is the result of the law, that man will not work as he ought, unless he is allowed to work for himself. He changes the face of society also as he moves along. The patrol—the police—the army—general espionage—domiciliary visitation—the suppression of the book and the newspaper—the interdict upon speech and thought

—the destruction of all social intercourse—the banishment of the stranger—the exile of the citizen—the weakness and insecurity of the social state—laws that would shame the bloodiest of the Code of Draco—nay, barbarism itself—all these compose the grand *cortege* which follows in the train of Slavery. And this is no fancy picture. Look at the consequences in the reckless adventure of the madman Brown and his half dozen confederates. Martial law became the order of the day. No man could go outside of his door, without giving the pass-word to the sentinel, who paced along the adjoining street. Turn your eyes to Texas, and behold the scenes which are now being enacted there. Look in the direction of the Southern ports. You find them closed against Northern vessels, except on condition that their crews shall be compelled to lie in jail; and when a distinguished citizen of Massachusetts is sent to South Carolina, in the quality of an ambassador, to remonstrate, he is invited to leave the State. Remember the exile of Underwood from Virginia, and the expulsion of a whole body of quiet, unoffending colonists from Kentucky. Turn to the laws enacted in Kansas and New Mexico, and the slave codes of the several States, from which they were mainly copied, and compare them with the alien and sedition laws, against which Virginia and Kentucky so loudly protested. And then cast your eyes over the whole vast field, and observe the general terror—the insecurity—the lynch law—the burning at the stake—the utter inhumanity and barbarism which attend it every where. Why, the chivalry of Virginia—brave enough, no doubt, if they were called upon, to meet an open foe—were unsexed, and their very knees smote together, as though the earth were yawning beneath them, at the bare idea of an uprising amongst their slaves. Well might they have said with the stout-hearted tyrant, when he awoke from his fearful dream on Bosworth Field:

“Shadows to-night have struck more terror to the soul of Richard
Than could the substance of ten thousand soldiers.”

One man might have chased a thousand, and two put ten thousand to flight. Who would be willing to live in a community surrounded by such horrors? What would be its capacity to resist a foreign invasion, with this element of weakness in its midst? The war of the Revolution tells the story. And who is there now to lend his aid to its extension, or to say that we are not interested in arresting it? If the Union is assailed, is it not a part of our duty to defend it? If the slave should revolt against his master, is it not our sons and brothers that must go up to his deliverance? Is it not, then, our right and our duty to say,

"Thus far shalt thou go and no further, and here shall thy proud waves be stayed?"

The whole question between us now is one of political power. Our Southern brethren are of the opinion, that if we of the Free States get into the ascendant, the interests of slavery would be unsafe. It is essential, therefore, in their view, to their peculiar property, that the reins of government should continue in their hands. This cannot be, however, without yielding to the control of the minority, and that is precisely what they have enjoyed through their representation in the Senate, and what they have claimed and asserted in the adoption of the two-third rule, by which the nomination was wrested from the Northern candidate, who complains of its operation precisely when it does the work for which it was intended, and the cup of humiliation is carried to his own lips, by the men to whom the Democratic majority had sacrificed its power. It is a confession, however, that the institution of slavery is not reconcilable with the majority principle, and is, therefore, necessarily anti-republican. To save their power then, it is essential that they should preserve an equality in the Senate, which shall neutralize the numerical majority in the Free States; and this is the whole secret of the struggle in relation to the territories.

By what right is it, however, that they seek to take possession of them? The argument is, that they are the common property of the Union, and that they are as well authorized to carry their property there as we are. We do not deny this. We claim no rights in the territories which we are not willing to accord to them. We admit that we have no more authority to take a slave there than we have to import a contagious disease. But we do insist that our rights there are equal to theirs, and that the admission of the slave will have the effect of excluding the settlement of the freeman; and we point to the experience of all countries, and the condition of the Slave States in particular, as contrasted with our own, to prove it. Why, it is an old story. Five hundred years ago, the Lords of Coney and Clermont, in France, following the general example of the time, emancipated whole villages of serfs, for the express reason, that "for hatred of such servitude," the stranger declined to settle in their territories, and their lands remained uncultivated and unpeopled, and comparatively worthless to themselves.

We do not admit that slaves are property except by virtue of the local law. There is nothing in the natural law to warrant such a relation. The great Declaration proclaims this truth. The Republican platform reiterates it. The Democratic platform is silent, because the interests of slavery require that it

should be ignored, as but "a glittering generality," or "a fanfaronade of nonsense." The Fathers knew, however, what they were saying. They were quite as wise as we are. The sentiment was nothing new to them. If the great law of Christianity, promulgated as it was so often by the Roman pontiffs themselves, did not settle that question, the voice even of an absolute king, thundering out of the darkness of the fourteenth century, might have been heard proclaiming, in the name of the law of Nature, the right of liberty to every human creature framed in the image of God, and declaring the anxious wish that the realm of France might become, in fact, what it was in name—the Kingdom of the Free—(*Le Royaume des Francs*). When God gave dominion to man over all created things, we do not find that he invested him with any such authority over his fellows. No contract can establish it. It has its foundation either in force or fraud, and is in effect no more than the law of the stronger. If it is good as to the black man, it is equally so as to the white. And this was the idea that the signers of the Declaration and the framers of the Constitution obviously entertained. There is no doubt that slavery has existed from the earliest times, and it may be admitted that it was perhaps a step taken in the direction of humanity, when it came to be thought that a better use might be made of a captive taken in war than to burn him at the stake—as these apostles of the new humanity are said to deal sometimes with their own negroes. However originating, our Fathers found it here, when they were laying the foundations of our Government. When they refer to it, however, it is only as the creature of the local law. The provision in the Constitution, which is supposed to recognize its present claims, while it shrinks from the utterance of the odious word, describes the slaves as "persons held to service or labor in one State"—not by the general law, but "by the laws thereof." And this, too, was in precise accordance with the common law, as settled in England, and always recognized here, until the decision of the Dred Scott case. To insist, however, that what is property by the law of a State, becomes so by the law of the Union, and is entitled to protection every where, is to say in effect, that the laws of every State may be transported into the territories, and engrafted on the general law. Thus, because dogs are property here, as they are now by statute, they are property every where, and by the same logic, slavery may be imported into Pennsylvania, and exist here in spite of us. Our ancestors, or rather the Southern States themselves, thought that it required a constitutional provision to secure the

right of *recaption*, even in the case of an escape—a thing which was not dreamed of in regard to any other chattel—and they inserted it in this form.

Taking their own language, therefore, and the fact of its supposed necessity, as the guide, it is by the law of the State only that this relation can exist. While there is nothing in that instrument to make it the law of the nation, the implication is precisely in the opposite direction. If it is not made so, however, by the Constitution, it is clear that it cannot be made so by the authority of Congress. Assuming it to be true, as announced in the first article of the Democratic platform, that the construction of this instrument is to be a strict one, and that no doubtful power is ever to be exercised, or—as General Foster has just asserted in his Philadelphia speech—that where there is no express grant of power, there is no right to legislate at all, it would be curious to know where the authority is to be found on the part of that body to alter the common law, and to depart from the declared purpose of the instrument—which is “to secure the blessings of *liberty*”—by nationalizing *slavery*. If the Congress of the United States can do this, it can do any thing. Those who insist that it may, and yet profess to adhere on all occasions to the letter, are but cheats and impostors, unless they choose to take refuge in the idea, that they are “to be pardoned their bad hearts for their worse brains.” The argument admits, however, in effect, that it cannot be legislated in.

The idea of one branch of the Democracy, however, is that the Constitution itself has done this work—that it has adopted human slavery as the general law of this confederacy, with freedom only as the exception—and that it carries it *proprio vigore*, by its own inherent force, to the very limits of our dominions, and wherever our flag is found to wave. This is the view of a Democratic President, as embodied in the declaration that Kansas was already as much a slave territory as Georgia, and this is the new doctrine propounded for the occasion by a slaveholding judiciary. If there is any difference in the opinion of the arch agitator, Douglas, and his retainers, I am at a loss to discover what it is. I do not think, at all events, that there is enough to quarrel about. I confess that I am bewildered and befogged in the labyrinthine contradictions of his political metaphysics. He reminds me, as he pilgrimizes on his pious errand throughout the country, discoursing on this theme, of the fallen spirits of Milton, who sat upon a hill apart, and

"reasoned high
Of Providence, foreknowledge, will and fate—
Fixed fate, free will, foreknowledge absolute,
And found no end in wandering mazes lost."

I do not profess to be very sharp, but if there is any thing left of his doctrine of popular sovereignty, it has faded out, in my view, to the tenuity of one of Ossian's ghosts, looming up in the midst, with the stars twinkling through its sides. It has tapered down, I believe, into *non-intervention by Congress*, a doctrine expressly repudiated by the Baltimore Convention of 1848, by a vote of 246 to 36, when it was proposed by the volcanic Yancey, who is now belching smoke and flame, and threatened to smash up the national machine, "and break things generally." That is now the unvarying refrain—the everlasting burden of his song. It seems to me, however, that the whole logic of the case is with his antagonist. When he admits that the question is a judicial one, and declares his acquiescence in the doctrines of the court—as he does in that delicate piece of joinery, which was dove-tailed into his platform, or perhaps rather superadded, like the tail to a boy's kite, to steady its motion and help it in its ascent—by the cunning hand of Wickliffe—not him, by any means, who first tried his hand on the Saxon Bible—he surrenders the whole question, and goes over to Breckinridge, and they both go down together. The court has already decided that the Constitution of the United States carries slavery into the territories; that Congress cannot exclude it; that it cannot confer on the territorial government a power which it cannot exercise itself; and that the territorial governments cannot, of course, meddle with it themselves. If all this be true, the obligation to intervene, if necessary, for its protection, follows as irresistibly from the premises, as the re-opening of the slave-trade is sure to tread upon the heels of the doctrine that slavery is national, and liberal and just. If it be true, however, that he has kicked down the Wickliffe plank, in his late speech at Clifton Springs, he is now, as the lawyers say, *in nubibus*—suspended in mid-air, like many an unfortunate wight before him, without any platform at all, upon the doctrine that the territories are without a master, and are law unto themselves, whether the Supreme Court decide one way or the other. And this is squatter sovereignty, *in excelsis*, although he has come to dislike the word.

The doctrine of squatter sovereignty, a recent invention, attributed to the genius of Cass, and first ventilated, I believe, in the famous Nicholson letter—equally unpalatable to the Southern Democrats as to ourselves—so far as it conveys the

idea of the right of a people to regulate their own institutions, domestic or otherwise, is not to be questioned by any body. The fact, however, that the territories are the property of the Union, and that the question is, whether they are to come into the general partnership as States, presents a very different issue. Admitting the right to acquire them by either cession or conquest, the Government stands, of course, in the relation of a proprietor, with all the usual incidents of ownership, and subject even to the right of re-sale as one of those incidents. If the Democratic party is right, however, in its principle of strict construction, we have no valid title at all, because there is nothing whatever in the Constitution to authorize the acquisition, as was admitted in the cases of Louisiana and Florida. In that case, there is an end, of course, of the whole question; the domain and empire become alike derelict, and squatter sovereignty must reign supreme. If, on the other hand, they are wrong—and the assertion of title admits it—then the power to make all needful rules and regulations in respect to it, is denied to the lawful proprietor, in the face of a clear constitutional provision, and the well-settled law in regard to ceded or conquered territory; and the settler, either with or without title, may establish just such form of government as he thinks proper. The answer to this is, that the rights of the proprietor, though generally absolute, must be exercised in this case within the limits of the Constitution. That instrument, however, is assumed to be entirely silent in regard to it, and to contain nothing to authorize any legislation on the subject at all, while it is not questioned that Congress may and does exercise the law-making power, and authorize the appointment of executive and judicial officers, without reference to the supposed rights, or wishes, or opinions, of any or all of the sovereigns, who may have emigrated from other States into the common territory. It is not intended, however, by this argument, that the settler shall do just as he pleases, even in regard to what are called pre-eminently the domestic relations. The practical notion is, that he is a sovereign only for the purpose of legalizing slavery. When the people of Kansas decided in favor of a free constitution, it was found that they could not be admitted, even though they counted nearly a hundred thousand souls. With slavery, they might have come in at any time, and pocketed a *bonus* for doing so. When Brigham Young and his followers, however, by a logic that was unanswerable, undertook to carry out this doctrine, and to provide help-mates for the saints, by the adoption of the fairer of the "twin relics of barbarism," it did not seem quite so clear, and the saints of the Douglas congregation allowed their *pity*

for once to overrule their *politics*, and voted in favor of intervention to destroy.

But this question has another aspect, which seems to have been overlooked in all the discussions upon it. It seems to be agreed on all hands, that there is nothing in the Constitution to *authorize* directly the acquisition of new territory, and that, of course, the provision in regard to public lands, as well as that which relates to the admission of new States, has reference exclusively to the then existing territories, and not to any others which might be subsequently acquired. The Democratic rule of strict construction, applied to this case, involves, of necessity, an entire denial of all these rights. It follows, therefore, that there is no right on the part of the people of these territories to come in at all as States, and certainly none to come in on any other terms than such as the Government in its discretion may think proper to impose. In any view, moreover, the power to acquire is merely an implied and incidental one. When, we come, however, to the question of *admission*, there are other considerations which enter into it. Shall they be permitted to come in as Slave States? If they do, they bring with them a representation on the basis of property. That is an anomalous feature, involving in the preference which it gives to a peculiar species of property, which the common law does not recognize at all, over that which *is property* by the universal law, a gross inequality of privileges between the States. So far as it regards the old States, or, if you choose, the old territories, it is our bargain, and although a hard one, looking to the circumstances under which it was made, and the advantages which we have realized from it, we are willing to stand up to it, and to shame the violators of the Missouri Compromise, by a faith that has not been observed in regard to ourselves. When we are asked, however, to go not merely beyond the letter, but beyond the very *spirit* of the contract, by extending, in favor of after acquired property, a privilege which is against common right, because it is in derogation of the great fundamental Republican rule of equality, we may well answer—"non in hac fœdera venimus"—we made no such bargain. While we do not, like our Democratic friends, insist upon the letter, in the construction of the fundamental law of a State, as we would in that of a penal statute, because we know that "the letter kills," we do insist that the instrument is to be construed with reference to the territories then owned, and that it is a rule of common sense, as well as of the common law, that no provision in a contract, which derogates from natural right—and equality in such right—is ever to be extended by construction. Because we chose to accord

the right of representation to an old partner, upon a consideration which has never been exacted by us in the imposition of direct taxes, and has, of course, thus far practically failed, it does not follow that we are to admit all creation to the same privileges, and that, too, upon the vote of a bare majority of States. Strictly speaking, the admission of a new State outside of the Constitution, if consistent at all with the idea of a Government limited like ours, is an act of sovereignty, which ought to have the consent of all, precisely as the admission of a new partner into a mercantile firm. The practice has settled it otherwise, in analogy to the constitutional provision, but no practice can incorporate a principle which interferes with our rights, or our equality as a State. And these are doctrines that no man who stands upon either of the Democratic platforms, can with any show of consistency controvert. If their notions are sound, there is nothing clearer than the postulate, that there is no other condition on the part of the territories in their provincial state than that of entire dependence upon the will of their proprietor, and the right to govern them by the law-making power of the parent State is as unquestionable as the right to dispose of the land itself. If the condition of wardship and tutelage should happen in any case to be perpetuated by the persistent refusal of the people to take the oath of allegiance or to come into the Union at all, it would make a curious problem for the Supreme Court and the political philosophers of the Democratic school.

Nor is it any answer to say, that we are free to exercise the same privileges by the re-establishment of slavery amongst us, or that the black man is reckoned as a *unit* in the apportionment of the representation, while he is counted only as a fraction in the Slave States. The necessities of our social condition, a proper respect for the right of others, and an intelligent sense of our own interest, absolutely forbid the return to a system which degrades the white man, and impoverishes and weakens the State. If we do count the negro as a unit, when he is *free*, we enjoy no advantage in that particular over our brethren of the South. It is a representation on both sides on the basis of *men*. When it comes to the *slave*, it is a representation of *property* only. Though nominally *persons*, with a representation as such, they are substantially *things*, because they have no will of their own. If their emancipation should raise them to the *political* value of an *integer*, it would be accomplished by reconverting them into men, with a will of their own, and a disposition perhaps to travel northward, and add still more to the ever increasing preponderance of our federal numbers. It is not admitted by the South, and is denied by the Supreme Court, that they are

citizens, whether bond or free, although it has been generally supposed that the right of representation enjoyed by both of them implies it, and it seems difficult to understand how a man is to be represented without being a citizen, or how it is that those who have no less than twenty-one representatives in Congress, should have no standing in the Federal courts as citizens. If there be any conclusive test, it would seem to be this, and yet they deny the title with their usual logic, even to the freeman, who is treated as a *whole* man in adjusting the representation on the basis of numbers.

And this leads me to speak of the decision of the Supreme Court upon this question, which, as Mr. Douglas thinks—or did at least before his speech at Clifton Springs—no honest man can dispute. I am free to say, I am not one of those who carry their respect for the judiciary so far as to hold myself concluded by any opinion of theirs upon a question of state, or one which involves the liberties of a people. There is nothing in the Constitution itself to invest them with any such power. It has never been the usage even in England, where the rights of the people are dependent on ancient charters, and acts of Parliament, and the unwritten customs of the realm, to acquiesce in any decision that was felt to traverse the popular instincts, or to disturb any of the old maxims or landmarks of liberty. If they had yielded on such occasions, they would have been slaves now, and so would we. The experience of that people had demonstrated that judges were no further to be trusted than other men, and that in all the struggles between prerogative and privilege, they had been invariably the supplest and most tractable of all the instruments of tyranny. The lesson was not lost upon the statesmen of the Revolutionary era. The danger of intrusting the public liberties to a guardianship so practically irresponsible, was felt and pointed out by the sagacious Jefferson in the Declaration, that to commit a power so great to any *seven* or *nine* men, perhaps no wiser and no better than ourselves, would be to make them the absolute masters of the State, and to erect the Government into a judicial oligarchy. The same doctrine, overlaid by the reverence inspired by the high character, the eminent patriotism, and the distinguished learning of such men as John Marshall and his associates—was reiterated by Jackson in a case involving an economical question only, was indorsed by Buchanan as a Senator in the same case, and is now canonized as an article of Democratic faith in the Cincinnati platform. The decision in the Dred Scott case, with others which have touched not only the anomalous property in slaves, but all property whatever, has made it the sentiment of all parties in the nation. There was

something providential, as it seems to me, in the time and manner of its occurrence. It was a decision volunteered by slaveholding judges, and foreshadowed by the President in the very crisis of the Kansas struggle, with the obvious purpose of casting the balance against the Free States. It was *judicial* intervention, following upon the heels of *executive* intervention, to secure *legislative* intervention, and approved even by those who profess to be opposed to any intervention at all. It has awakened the nation to a full sense of the wisdom of Jefferson, and the reasonableness of that jealousy which was once condemned as inordinate. I should be glad to examine it, if the time would allow me. I dismiss it, however, to the owls and the bats, to that oblivion which is sure to overtake it. It has failed to do the work for which it was intended, and will soon die out, leaving behind it only the valuable lesson which it has taught us.

And yet humbly as the negro is rated in this Government, we are told that although we meet him at every corner, we must not *agitate*, if he insists on taking the wall, but must lift our hats respectfully, and pass by quietly on the other side. On terms of unconditional submission, we can have peace—so can anybody in the worst of governments—but not otherwise. If we petition, we are insulted; if we remonstrate, we are taxed with insubordination; if we assert the right to rule, because we are the majority, we are threatened with a secession.

Well, we have endeavored to be quiet, and for the sake of peace, have borne and forborne for a very long time, but we cannot exorcise this juggling fiend, or bid this unquiet spirit down, by putting a padlock upon our lips. Turn your eyes to the last session of Congress. The Republican members adopted, as you know, the policy of almost unbroken silence, but what a storm of vituperation was poured upon their heads! For six long weeks the thunder bellowed, and the lightning flashed around that hall, but there they sat like "Patience on a monument," without reply, until the tempest had spent its fury and growled itself to rest. Nor did the Democrats or the Union savers of the North themselves escape the dire anathema. The former, or perhaps more properly the anti-Lecompton portion of them, were but a shade *paler* than the *Black* Republicans themselves. The latter—there was no quarter for them—were but the veriest Swiss, who wanted to secure the custom of the South, and were willing to pawn their principles and dishonor their fathers, if necessary, for the merest dross. And the same spirit transmigrated into the Charleston Convention, and blew the whole concern to atoms.

And now as to the risks of a secession. This has been often talked about of late, and has, on earlier occasions, been treated by such men as Clay and Webster as something serious. If it be so, the sooner we know it the better. With all proper respect, however, for the sagacity of those distinguished patriots, I am constrained to say, that I have never been able to listen, with any measure of patience, to threats of this sort. I have never entertained a fear in regard to the Union of these States, and would treat the very imagination of a dissolution as the highest of treasons, if I did not regard it is the wildest of chimeras. The man who thinks that these States, which have been joined in holy matrimony by a bond of liberty, are to be ruptured and divorced upon a question like this, is, I think, no statesman, and has a very imperfect understanding of the ties which hold us together. If he supposes that it is only a paper Constitution, which may be one thing to-day and another to-morrow, according to the mere shifting will of a bench of nine Federal judges—he is greatly mistaken. That would be but a rope of sand. No. It is the community of interest and of origin—the means of intercommunication—the family tie—a common history—the sense of a common struggle—and above all, the intense, overpowering sentiment of nationality which follows our flag every where, which travels as we travel, and away beyond the seas, amid the tumbling icebergs of the Arctic ocean, and down under the burning line, is ever present in the American heart, flinging off in the dim distance all recollection of State lines, and comprehending in one affectionate embrace the whole vast circle, the almost limitless expanse, that proclaims the present and prospective power of the great American Republic, the queen among the nations, "our own, our native land"—these, these are the threads, light and delicate as the gossamer, but strong as cables of adamant, that anchor us by the rock where our Fathers left us, and guarantee our lasting unity as a people. Why, the rustle of the star-spangled banner, or a quaver of Yankee Doodle, would disperse a whole legion of secessionists.

But if the exercise of a constitutional power in the resumption of the long abdicated rule of the majority, and the election of a candidate who is not agreeable to the slave owner, are to result in a convulsion of this sort, it is high time that the experiment were made, and the conservative powers of this Government put to the proof. If it cannot survive the shock of a change of dynasty like this, it is hardly worth saving. The idea that it can be overthrown in this way, is one which will be only strengthened and confirmed by the maintenance of the

present order of things. The time to settle that question, if it is to be settled at all, is *now*. The insolent menaces of the Southern leaders amount to a challenge, which we cannot decline, without a confession of our weakness or our fear, which will only aggravate the evil hereafter. It is our duty to defeat them now, if it were for no other purpose than to teach them modesty, and to show the world how utterly hollow and ridiculous is all this clamor, which has shaken the nerves of the weak and impaired the confidence of the ignorant, in the stability of this Government. It is the sovereign remedy, and the only one, for all this agitation, which it is thought so desirable to repress. To suppose that it will go down by a new submission, or upon a new covenant of peace, in view of our past experience of the exactions and the perfidy of the slave power, is about as reasonable as to expect that the strong man shall not struggle while the night-mare sits upon his chest, smothering his respiration, and damming up the very currents of his life.

All these threats, however, are but an insidious appeal to our affections or our interests. They involve one argument for the generous and the patriotic, and another for the mean and the sordid. They suppose among us either a love for the Union of these States as strong as the affection of the mother, and with a little of her weakness, too, or a base and ignoble spirit, which would sacrifice every thing, even to self-respect itself, upon the altar of Mammon—"the least erect spirit that fell." They find both classes, unfortunately, amongst us. For the first, we can respect the *motive*, while we deplore the *weakness*. For the second, there can be no feeling but the deepest scorn and the most unmitigated contempt. The man who has no sense but of his pecuniary interests—who is ready to make merchandise of his principles and independence, and is silly enough to be alarmed. At the threats of non-intercourse and loss of trade—it would be base flattery to call such a creature a man. Does any one suppose that the cotton planter comes here, and deals with us upon the principle of personal affection, and from a disinterested desire to favor us? He forgets that trade has its laws, which are as regular in their operation as those of physics. The slaveholder will go precisely wherever his interests or necessities lead him. He is as dependent as any body. He must buy his bread, his horses and mules, and his implements of husbandry, from the North. He must come to the Northern cities, to realize the product of his crops, and to find carriers for them. He wants advances, or in other words credit, and he can only find it there. He must go there to purchase the silks, the jewelry, the pianos, the fine carriages, the expensive furniture, all the luxuries

—nay even the necessities of civilized life, which surround and embellish his home. He must go there, too, to parade the beauty of his daughters, and the magnificence of their attire, as well as to recruit his own shattered frame, at some fashionable watering place, where he can purge off the miasma of the rice field, by inhaling the pure and health-giving breezes of our more favored clime. He cannot make any of these articles at home. There is no skill, no machinery, no commercial activity, no marts of trade, no great cities, where slavery flaps its heavy wing over the soil. The very genius of that institution forbids it. He cannot even educate his sons to manhood, without sending them to a Northern university. To refuse all connection with us, and to decline the indulgences which it supplies, would be to take a long stride backward in the direction of barbarism. If the Union were divided to-morrow, and peace could be maintained between us, there would be precisely the same relations of connection and dependence as now. The North would carry and sell their cotton, purchase their bills, provide them with their bread, and educate their children. There can be no commerce where trade is made a question of color, where its free wings are clipped by police regulations, and where sailors have to be thrown into jail, because their skins happen to be a little darker than ours. There can be no universities where there is an embargo on speech and even thought—no education where books are burned in the market places by the common hangman, and professors are exiled for daring to be men. The merchants of the North, who advertise opinions for the Southern market, and cringe, with the suppleness of the Asiatic eunuch, to these cotton lords, are not only derided for their folly, but despised for their servility. There is not a high-spirited Southern maiden, fitted to be the mother of a race of freemen—and there are many such—who would not scorn to mate herself with a creature so abject as the man who would endeavor to recommend himself by artifices such as these. It is the North that produces the vigorous progeny that takes the lead in every department of industry, even in the Southern States. I have heard Mr. Douglas himself remark, that in every leading city of the country, its supplies of intellect and enterprise were drawn from the regions North of it. It is not, however, from such a degenerate stock as this that any thing manly is to be propagated. It is only the man who will respect himself that will be respected by others, and it is only with such a man that a truly elevated Southern gentleman would choose to deal. He sees slaves enough at home. His confidence is only for freemen.

But what is to be gained by secession? Secession is revolution. There is no such thing as a quiet separation. The Union is something more than a confederacy, which will divide by its line of cleavage, like a stratified rock or a lump of stone coal. If it be rent asunder, it will be by a blow like that which shatters the granite rock. Is it to advance the interests of the slave owner that this thing is to be done? Why, Wendell Phillips and his party are better logicians than this. They look upon secession as the direct highway which leads to the utter extinction of slavery. And they are unquestionably right. The lapse of two years would not see a Slave State upon our Southern border. As the chasm widened and deepened, the black cloud, whose edges are now fringed with flame, would roll back upon the Gulf, to accumulate its horrors, and concentrate and intensify its aggravated thunders there. And the process would go on, until the Border States, unwilling as they would be to bear the burthens, and encounter the dangers of that institution, would wheel round into line with us again, section by section, and tier after tier, as they respectively became free. The ingenious expedient of the western farmer, who proposed to save his corn from the depredations of the vermin, by planting no border row at all, would be about the only feasible provision against a general stampede.

All this, however, supposes that the separation is a peaceful one—as it cannot be. It would be more or less violent; and what are their means of defense, with an army of freemen in front, and a savage, relentless, unpitied foe, stung to madness by oppression—with a long arrear of injuries to wipe out, and freedom, God's best gift, before him—in their dwellings, at their firesides, and hanging menacingly upon their rear? The thing is not to be talked of by sane men. They would prove inadequate to defend themselves from the knife, and the torch, and the poison in the hands of their own slaves, and would come back, like the prodigal son, to beg re-admission under the paternal roof. And yet, with all these elements of weakness in their midst, and a white population impoverished and degraded by the contact, they presume to threaten *us*, with all our material and moral power—our great resources in men and money—our universal freedom—and our unrivaled means of concentration! Do they hope to enlist others in this struggle? They have more than once insinuated as much. If they could succeed, however, in securing the support or sympathy of any portion of the civilized world, in such a cause, and upon such an issue as this, what is to be the return which they are to make for it? Are they to sink again into a condition of worse than colonial dependence upon the monarchical governments of the

Old World? Do they prefer the condition of subject provinces to that of independent States? If they do, it is more, however, than we can suffer. We cannot permit any European power to hold colonies here, located as they are. We shall be constrained to borrow for the occasion the Monroe doctrine of "no foreign *intervention* here," from the Democratic platform itself. If our Southern brethren are not content to live in peace and harmony, under the broad shadow of our national flag, they must go somewhere else. The land is ours. We cannot afford to part with an acre of it. We have an interest in its battle fields. Eutaw, and Camden, and Guilford Court House, are historic names. The blood of our ancestors has mingled with their soil. It was at Yorktown that the curtain fell upon the drama which opened at Lexington, and Concord, and Bunker Hill. The bones of the mighty dead of our heroic age are still resting in their midst. Mount Vernon is still there. So, too, is Monticello. We cannot consent, however, that, after the custom of the aboriginal tribes, they shall disinter these precious relics and carry them away in their Hegira. We will gather them up with pious hands, and build a mausoleum over them, which shall be a shrine for the patriotic pilgrims of future times, and a standing reproach to the degeneracy of their sons.

The Democratic party has not deemed it worth while to give a thought in its platform to the question of the preservation of the Union. Its leaders have again and again threatened it with destruction. The Republican party stands pledged to maintain its integrity under all circumstances. It was in the very midst of the tempest and fury of denunciation on the floor of Congress, and while the Council Chamber of the Nation was ringing with the treason, which the galleries were applauding to the echo, that the invocation to the friends of the Union, which is to be found in the call that gathered the people together at Chicago, was penned by my own hand. It was the dominating thought with me, as it was, I believe, with every member of the committee. It re-appears in the sublime declaration of the Convention, that "the Union of these States must and shall be preserved." It is a vow registered in heaven—an oath sworn upon the altar of our common country, to which every good patriot in the nation will respond with a thundering *amen!* The idea of a dissolution of this great confederacy—the last hope of liberty to man—set as it were upon a hill, to flood this continent with light and to send its rays over the uttermost isles—and that, too, upon a question of property in man—is one which must find no utterance here to make it familiar to our ears, and is not even to be whispered to the winds that waft our commerce beyond the

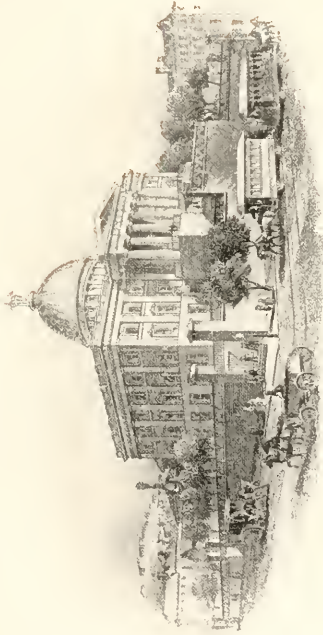
seas. What! the youngest-born of liberty, with its red baptism of steel and fire—the Union, consecrated by so many glorious memories and cemented by so many rivers of blood—to die *of* Slavery and *for* Slavery! The thought is treason, and we but misbegotten slips of a once noble stock, if we do not rebuke it wherever uttered—if we do not on all occasions rally around that Union as the ark of our salvation, and smite down the sacrilegious hand that is laid irreverently upon it. If that Union itself could speak to the dark spirit which menaces its existence, its answer would be, as it pointed up the ascent which we have been climbing for more than eighty years:

“Whence and what art thou, execrable shape!
That dares, though grim and terrible, advance
Thy miscreated front athwart my way
To yonder gates? Through them I mean to pass.
That be assured, without leave asked of thee:
Retire, or taste thy folly, and learn by proof,
Hell-born! not to contend with spirits of Heaven!”

No: the great American Republic, the Queen of the New World, the asylum of the oppressed of all nations—whose canvas now whitens every sea, and whose flag is known and respected on every shore—is not thus to perish by an unfilial hand. It has a destiny to work out in the ages that are to come. What glimpses of glory flash out upon our dazzled vision, as we roll up the curtain of the future, and look down through the long vista which is before us! There is nothing there to blast the vision of the seer, or to cast a shadow over the wide field of view, except the one dark stain, the one “damned spot,” which blots our escutcheon and even now threatens our existence as a nation. It will fade out, however, by degrees, under the glorious sunlight of an advancing civilization. Yes, fellow-citizens! it is written on earth and registered in heaven, that “the Union of these States must and shall be preserved” in its totality, without loss and without diminution! There is no star in that glorious galaxy that shall perish, but planet after planet, won from chaos by the indomitable energies of *free labor*, shall wheel into our system, until our shield is powdered with stars, and the loftiest of the Cordilleras, seated on his throne of rocks, and soaring, with his snow-crowned diadem, away into the summer heavens, shall, in the language of the poet,

“—o’er earth, ocean, wave,
Glare, with his Titan eye, and see no slave!”

And now, fellow-citizens, but one word more and I have done. In regard to the personal merits of the several candidates



THE SECOND PITTSBURGH COURT HOUSE.

Half-tone of a cut in "Pittsburgh and Allegheny in the Centennial Year," by George H. Thurston

who are before you, I have nothing to say. I agree that they are all respectable. I take them all, as selected and accredited by their respective parties, to be representative men, and pledged to administer the Government, if elected, in accordance with the spirit of their respective platforms. If you are of the opinion that slavery is the law of this nation, and the Union itself of no value, when weighed in the balance against it, you will vote of course for Breckinridge and Lane. If you think it makes no difference whether slavery is voted up or voted down, and that the service of enlarging its dominion over a territory five times as large as the State of New York, is a recommendation to a candidate here, you will vote for Douglas and his associate, who think that capital ought to own those of you who are condemned to labor. If you think it is wise to ignore the negro, and to leave the Government to be administered on the principle, that everything is to be sacrificed, as heretofore, for the sake of quiet and repose, you will support the ticket of the very respectable, but nervous old gentlemen, who have such a salutary horror of everything like *agitation*. If you think with me, on the other hand, that we want free thought and free speech—protection for free labor, and homes for free men—and a system of internal improvements which shall clear out our harbors and our rivers, and build a rail road to the Pacific, you will vote with me for Lincoln and Hamlin—and for Andrew G. Curtin in the first place, in order to secure them both. As you shall vote on the second Tuesday in October, so will be almost assuredly the result in the following month. Pennsylvania is admitted to be the battle ground. Your defeat on that day will put everything to hazard. Your success will make everything sure. The Presidential question is staked on that day's struggle. If you are beaten then, and beaten in November, the case will pass over to a tribunal where the smallest of the Slave States will be your peer. That is all that is now aimed at by the combinations which are arrayed against you. See that you disconcert their arrangements, by asserting your own power, and disposing of this question for yourselves.

And Pittsburgh and Pennsylvania responded to these eloquent appeals! A few days later and Allegheny County had announced the splendid majority of 6,689! A week or so later (October 20th), Governor Gideon Welles of Hartford, who had just read this Lafayette Hall speech, wrote Mr. Williams:

"I have just finished the perusal of your very excellent speech, delivered on the 29th ulto—in Lafayette Hall, and thank you most sincerely for the interest and instruction I have derived from it. The issues in controversy are clearly and forcibly presented and the convictions and conclusions inevitable. I am not surprised that, under such opinions and such teachings, your county rolled up that magnificent majority in the late election, which cheered and gladdened every Republican heart. I was with the National Executive Committee at the Astor House in New York when that intelligence reached us by Telegraph at nearly 11 P. M. Our room was full of earnest, gallant, generous Republicans when the Dispatch was brought in, and it would have done your heart good to have heard the thundering cheers that went up for glorious old Allegheny, and which were caught up and echoed in Broadway.

"I congratulate you, my friend, most cordially on the triumph you have achieved in Pennsylvania. It has settled the Presidential election, I think, for in all human probability Lincoln will be our next President, and I have confidence that his administration will prove a great success.

"The overthrow of the existing dynasty had become a necessity for our well-being as a people. It has become chronic with many, that the so-called Democratic party is the country, and that they alone can administer the Government. Under this delusion, the slavery propaganda have considered themselves as holding us in subjection, as well as their bond-men, and—their threats of secession and disunion if the Republicans obtain the ascendancy. It is almost as if their slaves rose to govern them. Republican success, and that alone can dissipate the errors into which many of our opponents have fallen. They will, in a year from this time be wiser, and I hope better men from lessons learned in the school of experience.

"There never has been a more favorable opportunity for an administration to acquire name and fame than that which shall succeed the one now in power. To those of us who through many trials and tribulations, and long periods of darkness and gloom have fought on, faithful and hopeful, the present prospect is most cheering, and we may well interchange sympathy and congratulation. * * *

"Very respectfully,

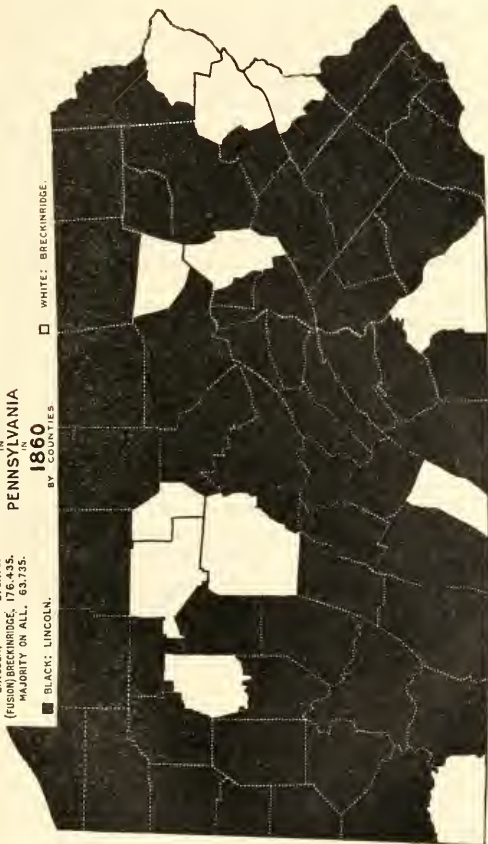
"GIDEON WELLES."

The Governor's predictions were, as is well known, verified in November. Pennsylvania went nearly a hundred thousand strong for "Father Abraham"—268,030

THE
PRESIDENTIAL VOTE
IN
PENNSYLVANIA
IN
1860
BY COUNTIES

VOTE:
LINCOLN, 270,170.
(FUSION) BRECKINRIDGE, 176,435.
MAJORITY ON ALL, 63,735.

■ BLACK: LINCOLN.
□ WHITE: BRECKINRIDGE.



Prepared by the author from official returns



1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
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1900

to 178,871 for Breckinridge. Mr. Williams was, of course, sent to the Legislature—there to stand for two great questions—one local and one national, and the way the national one sprang into vivid reality in Pittsburgh at this time is well illustrated by an incident noted a few years ago in an address by the well-known orator, Congressman John Dalzell. "In years gone by," said he, "I have many times wandered in the Arsenal grounds, but it will always be associated with a boyish recollection. The year was 1860. James Buchanan was President of the United States. John B. Floyd was his Secretary of War. The Secretary sent an order that would have stripped the Arsenal of its guns and sent them South. Secession was in the air. The order created the most intense indignation amongst the citizens of Pittsburgh. While the guns were on their way down Wood street to the Monongahela wharf to be shipped on boats there awaiting them, the citizens rose in arms. They sent a protest to Washington. They held an indignation meeting and on the steps of the old Court House I listened to the impassioned eloquence of Thomas Williams, then or afterwards a member of Congress from this district, arguing against violence and appealing to a reverence for law. The Secretary's order was withdrawn, and the guns remained where they belonged, with us. Grand old Thomas Williams!"¹

¹ Copy among the Williams papers. Address at Carnegie Music Hall, on May 23, 1902. The event itself occurred on December 30, 1860. Mr. Williams was chairman of the committee on resolutions. See the *Gazette* of December 25th to 31st.

CHAPTER XV

AT HARRISBURG

HIS NOTABLE SPEECH ON THE MAINTENANCE OF THE CONSTITUTION AND THE UNION AND THE CLIMAX IN HIS FIGHT AGAINST THE PENNSYLVANIA RAILROAD

HE IS ONE OF THE ESCORTS OF LINCOLN'S FAMILY
TO WASHINGTON AND ATTENDS THE INAUGURATION

1861

When the Legislature convened at Harrisburg on New Year's Day, 1861, Mr. Williams, who had been in the Senate a score of years before, now appeared in the Lower House as one of five members from Allegheny County. This body, while it was elected, like Lincoln, to insure that "the Union must and shall be preserved," by a careful conciliation of all parties, and a judicious selection of War Democrats by State Chairman A. K. McClure, of the Republican committee, was with equal care managed to carry out two financial measures, in behalf of the interests of the dominant element in the political oval of the State, represented by President Thomas A. Scott of the Pennsylvania Railroad and the Philadelphia interests in the old Sunbury and Erie Railroad.¹ Or, to state this latter fact in another way, the Bismarckian unifiers of industrial Pennsylvania, the chief feature of whose creed was the absolute necessity of a transportation system binding the State together and to Philadelphia, now required these two financial measures

¹ Colonel A. K. McClure has most interestingly told the writer the inside history of this campaign, as well as that in the Legislature after it was organized, and granted the privilege of using any of it that may contribute to the aims of this narrative.



THE CAPITOL AT HARRISBURG IN 1861

Half-tone of a photograph by Lemer, in 1861, the first made, now in possession of the author

in support of these two parts in that prospective system—and they took the necessary steps to get them. There was no civil war yet, and few believed there would be, even amongst the leaders; so that these measures occupied the public consciousness to a degree that can hardly be understood now. "To the leaders even," said Colonel McClure in a recent conversation with the author, "the possibility of civil war, when it did come later, was appalling—almost paralyzing." So that at the organization of the Legislature both elements were alert for advantage on these financial measures. Governor Packer's message on the 2d drew attention to the fact that the State debt was over \$38,500,000; that the State held mortgage bonds of the Pennsylvania Railroad, the Sunbury and Erie and the Wyoming Canal Company to the amount of \$10,981,000;¹ that since July, 1858, the Pennsylvania road had refused to pay its tonnage tax, claiming it unconstitutional, and that the debt amounted then to about \$700,000; and that although the Sunbury and Erie road had 148 of its 288 miles finished and 115 miles graded they were unable to negotiate their mortgage bonds in the present condition of the bonds, and he recommended these questions to careful consideration. He also drew attention at length to the critical action of the South Carolina convention, which assembled on December 20th and was still in session.² On the 3d nominations for the vacancy in the United States Senate were made and among the names presented were Edgar Cowan, an old neighbor of Mr. Williams' at Greensburgh; Henry D. Foster, Mr. Williams himself, Thaddeus Stevens, Daniel Agnew, David Wilmot and others, and Cowan was the final choice. On the same day, Mr. Williams offered resolutions on the secession question in the highest statesmanlike tone and temper, the final paragraph of which was: "Resolved, That secession is revolution, and its inevitable consequence, war; that the integrity of the Union must be maintained and defended at all hazards and under all circumstances: and that

¹ \$7,200,000 of the first corporation; \$3,500,000 of the second, and \$281,000 of the third. *Legislative Record* of 1861, p. 5.

² He gives a very interesting outline of the Commonwealth's relation to slaves from 1705 down.

upon this question the people of Pennsylvania will be, as they have ever been, a united people."¹ When an effort was made to lay it on the table, Mr. Williams asked for information as to the course that would follow, saying: "I am not very familiar with parliamentary law, not having had a very enlarged experience." It was laid over, as a joint resolution. This point is significant as showing his weak point in the fight that was to follow—at least in part. On the 7th he was placed on the general judiciary committee. Both Houses found themselves compelled to discuss the South Carolina question, all the more so because of the Governor's manner of presenting it, namely, that there was a possibility that the State had laws that were contrary to the national Constitution on the slave question. A strong effort was made to put Pennsylvania on the defensive in this matter and to conciliate the South, but on the 14th—the day before Governor Curtin's inauguration—everything gave way to the special order on the state of the Union. Mr. Williams first secured the floor of the House with his own resolution, which, in substance, demanded that the United States take immediate measures against rebellion and that Pennsylvania should at once do likewise and put her militia on a war footing. He supported his contention in an address that did more to bring him national fame, probably, than anything he had previously done. It brought him letters of congratulation from far and near. It was reprinted and spread even more widely, probably, than his other speeches. It voiced the spirit of Pennsylvania in the Civil War, and it was no small power in hastening her action.²

"Mr. Speaker," he began, "on the only occasion on which it has ever been my privilege to speak in this Hall, the nation was sitting in gloom, and these walls were shrouded in the drapery of woe. The Chief of this great Republic had just bowed his venerable head before the arrows of the Destroyer, and

¹ *Legislative Record*, 1861, p. 21.

² It was noised about that he was to speak and almost the entire Senate was present, among other attendants. Letter of January 15, 1861. A letter of January 7th shows that he had tried to make this address before, but the friends of the other senatorial candidates combined to prevent it, fearing the result on their candidates' chances. A letter of January 1st indicates his purpose to speak on the next day. The address was published in full in the *Harrisburg Telegraph* on the 17th.

the Representatives of the people were gathered here, to testify their sense of the great calamity which had befallen us. Nearly twenty years have passed away, and the providence of God has sent me back, on an occasion of deeper gloom by far than the mere transient eclipse which then shed a temporary twilight over the land. My errand here, like yours, was to attend to the domestic interests of the great State that owns our sway. I am met, like you, upon the threshold of this capitol, by a higher summons. I find my sphere of duties unexpectedly enlarged. It is not Pennsylvania that calls to-day, it is the great American Republic that demands the counsels of her children. The temple which our fathers built—the altar around which we worshiped in infancy, and under whose shadow we have ripened into strength and manhood—the Union of these States—the ark of our salvation—the sanctuary of our peace—the tower of our strength—the pearl of our pride—constructed with so much labor—glorified by so many recollections—and fraught with so many hopes to man—that mighty Union, which, almost within the memory of man, has clasped a continent in its embrace, and which, as we all fondly believed, was destined to live forever—is threatened with destruction. It is no foreign foe that summons us to its deliverance. In that direction, we know and feel that it can safely defy the world in arms. No! it is an enemy within our gates, and worse than all, it is a parricidal hand that now swings the incendiary torch over the fairest fabric that ever crowned the labors, or blessed the hopes or the prayers of man.

“And what is the cause that menaces this great structure with overthrow? Has it failed to accomplish the objects for which it was erected? Has it laid a heavy hand upon any of its people? Has it confiscated their property? Has it stripped the laborer of his rewards by the severity of its exactions? Has it trodden down the rights of a minority with an armed heel? Has it visited any portion of its dominions with fire and sword? No, nothing of the sort. It has been felt only in the blessings which have descended from it, like the early dew upon the tender herb. Peace and security have reposed beneath the shadow of its flag; plenty and prosperity have reigned throughout all its borders. What is it, then, that menaces its existence? Why, nothing but the simple exercise of a constitutional right never before questioned; nothing but the partial enthronement of an *idea*, not yet realized in *act*, in the election of a President. Never was provocation so inadequate assigned for an act so momentous in its character and consequences. On its face, it is but a pretext—the hollowest and the shallowest—for a premeditated parricide. The world will so judge it. If mischief

should ensue, we shall stand excused, unless we fail to put forth our hands to prevent it.

"The State of South Carolina—one of the old thirteen—torn by the valor of his sister States from the arms of the mother country—always turbulent, disaffected, rebellious—never loyal but to the British Crown—has run up the flag of rebellion, and publicly abjured her allegiance to that Government of which she has been a member for more than seventy years. The Gulf States—purchased with our money, nurtured by our care, and raised to the dignity of brotherhood by our indulgence—and if not States, then Territories still—have given tokens of a disposition to take leave of us in the same cool and quiet way. We have met this danger before, as regards the former, and have outlived it. In itself there is nothing, I think, to inspire extraordinary alarm. We can afford to laugh these threats to scorn, while we deplore the alienation which begets them, if we are but true to ourselves. The danger resides exclusively in the idea—and I admit it is a great one—that we are to stand by, and allow this great ruin to be accomplished without even a struggle, either because we *cannot*, or because we *ought* not, or because we do not *desire* to prevent it. The Press, and to some extent the Pulpit—powers equal to the sword, and perhaps even greater—have given currency to the idea that *coercion* is impracticable, that its exercise would not be in conformity with the spirit of our institutions, and that it would be a good riddance to be relieved of so turbulent a confederate at any price. The President of the United States, profiting by the hint, while he denounces secession as revolution, invites and encourages the experiment, by declaring that he has no power to prevent it. He breaks his sword, like his Secretary, in the eyes of the nation, and with the spirit of a craven, abdicates his high trust as the executioner of the laws. And this it is that has made me feel, for the first time, that we are drifting rapidly and helplessly upon the breakers of disunion, with imminent peril of shipwreck, not to one State only, but to all.

"Allow me to say, that these are fearful heresies. Those who indulge in them have not, I think, duly reflected upon the consequences to which they lead. It is not even true, that we should be better off without these States than with them. This Government is a unit. Better even a diseased limb, which is not incurable, than the doubtful remedy of amputation. Secession is revolution. That is a right which nobody disputes, where the provocation is an adequate one. It must be asserted, however, at the point of the sword. If unsuccessful, it is rebellion—no more and no less. There can be no peaceable secession

without treason on the part of our rulers, who are only our trustees. They have no alternative but to enforce the laws, so far as the powers lodged with them are available for that purpose. The act threatened here, which aims at the very life of the Government, is treason against it, by virtue of its organic law, and no authority of Congress can make it otherwise. The very attempt to legalize it would be something like treason on the part of Congress itself. The Constitution is a covenant of life, and not of death. This Government was intended to be perpetual. It contains no provision for its own dissolution. To rupture it, would be to dissolve it. It will not divide like the polypus. If South Carolina is out of it, so are we. When it dissolves, it will be like some wandering aerolite, which comes within the range of our atmosphere, and scatters its meteoric shower in every direction. We shall then cease to be a nation, and fall into an ill-assorted and ill-compacted league of jarring, discordant, belligerent, and heterogenous republics, ready to fly off upon the slightest provocation, and take each other by the throats. We shall come together again, no doubt, in process of time, but it will be by the power of the sword, and under the rule of the standing army and the bayonet; it will be by the repelling force of anarchy.

“And all this is to be risked in order to avoid coercion, either because we have not the power, or because it would be inconsistent with the genius of a Republican government, to compel its own citizens to obey its rule. No government has ever yet parted with any portion of its territories to a rebellious member, without at least a struggle to maintain them. When we shall have tried the experiment, and failed, it will be time enough to retire from the field, and confess that we are not adequate to the task of self-preservation, which would involve the humiliating confession, that Republican government is itself a failure. I, for one, am not prepared to make this admission, without, at least, an effort to preserve what our Fathers have left us. Our past experience proves the contrary. The disaffected States are weak—so weak, as we know, that they could not stand alone. That which is with them an element of political power, is equally an element of moral and physical weakness. The North is the insurer of the slave. The South is the only vulnerable point of our Republic. It is the heel of Achilles. The Government, badly administered as it has been, is still strong in the affections of the people. They will rally around it to a man in the Free States, at all events, where the power of the Government mainly resides. The moment it becomes a question of self-preservation, there will be no two parties here.

Secession, if practicable, would make us one. In the Union, the Slave States might have friends among us—out of the Union, they are the enemies of us all, and can look for no aid or sympathy in this direction. We shall be all agreed—*then*, if not *now*—to treat them as we do the rest of mankind, as enemies in war, in peace, friends.'

"But what is there in the genius of our institutions, or the voluntary character of our Government, to forbid the use of force to compel obedience to the laws? The idea is as absurd as it is dangerous. No government ever did, or ever can stand upon the mere bond of love, while human nature continues to be what it is. We are told that the angels rebelled; but they were cast out for their disobedience. Even the family government itself recognizes the law of *coercion*. There is nothing in the exertion of force which is inconsistent with the law of kindness. The master corrects his servant, and the father his erring child, without violating that law. No government has ever yet been administered without the aid of a magistracy and a police. They enter largely into our own. We have our jails and our penitentiaries, our sheriffs and our marshals. We maintain our armies. There is the array of the *posse comitatus* to aid the former. If the civil magistracy is too weak, we call in the arm of the military. The General Government has never before hesitated to employ it, when required. It suppressed an insurrection in this State, against its own laws. It has unloosed its dragoons upon the Territories. Why should it falter now? The admission of the novel principle that coercion is not to be employed, is a signal for revolt—an act of self-destruction. Concede it, and we are no longer a Government. The States, even the smallest of them, will laugh at your acts of Congress, whenever they do not like them, and pluck your holiday soldiers contemptuously by the beard. Nay, more. You must disband your armies, because they will have ceased to be of any practical use. No longer needed to overawe the negro, their only mission will be to hunt down and massacre the unhappy Indian.

"It will be said, however, that it is only where the popular sentiment of a State is apparently unanimous, that the Federal Government must yield. I know no State, as distinguished from this Union. It is a Government of the people, and acts only upon individuals. If it cannot seize and hang the State of South Carolina, it can at least lay its hands upon the rebel Governor, and all the traitors who are compassing our destruction. But how are we to know that the people of a State are universally agreed? Are we to take the newspapers, or the noisy demagogues, as our guide? Is no allowance to be made for the

quiet, reflecting conservatism, which may be overawed and silenced by the clamors of the mob? The present state of alarm in the South is death to the actual proprietor of the soil and the slave. Who knows but that the mere exhibition of force on the part of the General Government, would develop a sentiment that is now smothered? Shall we allow the men who entertain it to be ruined, because we will not give them an opportunity to speak out? Shall we abandon them to the hands of a few madmen, without even an effort to save them?

"But we are told that it will not do to draw blood—that the first drop spilled, will be the signal for perpetual war. I agree that the necessity of shedding blood, particularly a brother's, is always to be deplored. We must not play the woman, however, in such a crisis as this. Our ancestors were men who did not faint at the sight of blood. Torrents of it have flowed in the conquest and preservation of these States. We keep up armies to shed it, if necessary, in no greater cause. The scaffold has been the meed of treason everywhere. General Jackson has somewhere said, that secession is treason, and its penalty death. But how much blood will it cost? The way to save its effusion is to show that we are ready always to shed it, if necessary, in a righteous cause. How do we know that it will cost any more than a few heads in the present case? Does anybody think to save it, by allowing these States to secede peaceably? If they do, they are greatly mistaken. For drops, we shall have oceans. For a few traitorous heads, we shall have hecatombs of unoffending victims. For a war of a single campaign—for the blockade of a port—we shall have bloody feuds along all our borders—the whole country a camp, and the whole Union a battle-ground. How long shall we maintain peace on the border, with our present causes of quarrel greatly exasperated? The negro will run away more frequently than before, and there will be no fugitive slave law to reclaim him. If the owner follows, he will be dealt with as an invader. The South will make reprisals. If it attempts to close or embarrass the outlet of the Mississippi, the stalwart boatmen of the West will hew their way to the Gulf with fire and sword. If the feeling of insecurity—intensified as it will be—should prompt the seizure of the Northern trader, or the confiscation of his goods, we shall not then bear in silence with the indignities which are put upon us now, and tolerated, because these men are our brethren. By such a lawless course, they will put themselves beyond the pale of civilization—outside of the family of nations. New York, and Massachusetts, and Pennsylvania, and Ohio, will demand an instant and ample reparation for every wrong, and

our fleets will thunder at the gates of Charleston, and Savannah, and Pensacola, and Mobile, and New Orleans, while our land armies will unbind the shackles of the slave, and put the weapons of destruction into his hands. And the result will be, that after a fierce and bloody struggle, they will come back again, as Provinces, if not as States, to be re-admitted, if we shall so long hold together, with the root of bitterness extirpated, and slavery extinguished forever. And this is the peace which is promised us as the reward of our connivance in an act of treason! Men who profess to be conservative, and call themselves statesmen, may go about the streets crying 'Peace! peace!'—but there will be no peace here, but the peace of Pandemonium. God grant that our eyes may never open upon such a scene of devastated harvests and desolated homes, as is foreshadowed here!

"Is there any thing in the use of coercion, by way of prevention and correction only, to foreshadow such a state of things as this? There never was a time, and never will be, when force could be applied more properly, more easily, more successfully, or at a less expenditure of blood, than now. The provocation is absolutely nothing. Our sin is, that we have chosen to exercise an undoubted constitutional right, by defeating them in a fair contest, and electing the man of our own choice. That man is not yet inaugurated. If he were, it would be impossible for him to harm them. The slave power is entrenched in every department of our Government. There is no offense in *act*. The grievance is, that the people of the Free States have indorsed the Republican idea that slavery is an evil, and ought not to be extended. The crime is, that we do not think as they do. It is the *idea* only, according to a Northern apologist, that amounts to a declaration of war, and severs the golden thread that binds these States together. It is for a *difference of opinion* only, that the South proposes to secede from the Union. We know that it is but a *pretext*. The very fact, however, of its flimsiness, is a Providential one for us, if we are prepared to improve the advantage which it gives us. It will be impossible for the malcontents to find defenders any where upon such an issue as this, and the hands of the Government will be strengthened by the co-operation of the Border States, and certainly by the unanimous sentiment of the North, and the equally unanimous judgment of the civilized world. The time has come to crush at a single blow the serpent of sedition, whilst it is yet weak and without sympathizers. I should despair of the Republic, if we hesitated. Instead of furnishing excuses to a weak and unfaithful Executive, for skulking from the performance of his duty, we ought rather to strengthen his feeble knees, and encourage

him to profit by the signal fortune, which has put into his hands, at the close of a disgraceful administration, the opportunity of redeeming his past errors, and retiring amid the plaudits of the nation, in the character of a deliverer from the great peril into which he has himself conducted it.

"Is there any other course still left to us? Yes, we are told there is another. While the people of Pennsylvania are on tip-toe, straining their ears in the direction of the South, and waiting to hear the first boom of the cannon, and the roar and the shout of the opening conflict, a soft whisper of peace comes up to us on the Eastern breeze, and ten thousand citizens of Philadelphia,—whether men or women I know not,—instead of putting on their armor, and taking down their rifles from the wall, as did our Fathers, when the first blast of the war-bugle rent the quiet air upon the plains of Lexington—are thronging our Halls, and, on their knees before us, with the beseeching cry, that we shall lay down our arms, and surrender at discretion.

"Well, this is an easy remedy in most cases of dispute, but one which it is not usual for the weak to dictate to the strong, or the vanquished to the victors. It is, however, the commercial *nostrum*. Those, whose business it is to buy and sell, and deal in stocks and public securities, are apt to think that everything—even to liberty, and manhood, and self-respect itself—is a legitimate article of traffic, and to be rated at just so much current money of the merchant. The device which we, of Western Pennsylvania, bore upon our banners, was 'Union and Liberty.' 'Concession before Secession' was the pithy, but somewhat humble sentiment, that streamed from the windows of the great caravanserai on Chestnut street, and found expression on the lips of orators at Independence Square. It was not the language which our Fathers held at the same place. It was not, I think, the great heart of Philadelphia that spoke out there. It was not, surely, the great bell of liberty, with its glorious device—the brazen metal which rang out the tocsin of the Revolution—that gathered that assemblage together. Judging from its tone, and some things that preceded it, I should rather suspect it was something more resembling the *fire-alarm* that starts the sleeper from his bed and sends him half-naked and shivering into the street. That meeting was a sacrifice of burnt offerings for imputed and acknowledged sins. Its high priests were official dignitaries. It was heralded by the immolation of a propitiatory victim—a ram caught in the thicket—in the person of a gifted Republican orator and scholar who had been invited there to lecture on the very delicate and somewhat questionable

topic of honesty. Its cry was for peace on any terms. It brought judges there, fresh from scenes of domestic confiscation—their hands red with the slaughter of the innocents—to disturb the peace of the nation, by misrepresenting the aims of the Republican party, and weeping crocodile tears over imaginary confiscations of property in slaves. It lamented over the irrepressible conflict as a Northern sin. It apologized most humbly for our Pennsylvania vote, and protested that we meant nothing more than a Tariff—in happy unconsciousness of the fact, that the protection of free labor was the very expression of that conflict, if it exists at all. It could see nothing right on the sunny side of Mason and Dixon's line, and nothing wrong on the shady one. It had no thought for the dark-skinned African sailor, who is thrown into prison, and sold into slavery in Southern ports, for the payment of fines unconstitutionally imposed. It had no bowels for the Northern freeman, whose claim to the sacred title of American citizen—unlike that of Paul in the remotest province of the Roman Empire—is vainly invoked to stay the uplifted scourge. It pledged itself for a strict scrutiny, and thorough expurgation of our statute books, and a liberal indemnity for every runaway negro who might take refuge amongst us. If the people had gone there in solemn procession, barefooted and bareheaded, with ropes around their necks, and girdles of hair cloth about their loins, they could not have exhibited a more edifying spectacle of penitential sorrow.

"Well, I am as much a lover peace as any man, and would go as far as most men to preserve it. It is not to be purchased, however, by such sacrifices as these. If it were, I would not buy it by an act of self-abasement. I could not smite my chest, and bow down my face in the dust, and cry aloud, that we are miserable sinners. I do not admit that we have sinned. I find nothing in our statute books, that I would be willing to sacrifice as a peace offering to this insatiable spirit. We have no concessions to make, unless we are ready to confess that we have sinned in giving the vote of this State to the man of our own choice. As a sovereign member of this Union, we have stood faithfully by our contract, although in some respects an unequal one, and will expect all others to do the same. We have borne the rule of the Slave States from the beginning, without a murmur. When we were defeated, we acquiesced as good citizens. We should have done so now, if we had been beaten. Because we have succeeded, and the sceptre has passed into other hands, it is now insisted that we shall not rule this nation, and that it shall be dismembered, unless we will consent to make a new Constitution. It cost great labor, and many

sacrifices, to make the present one. We cannot make a better. If it were to be done anew, I doubt much whether we could make any at all. The Cotton States are estranged from us. They have come to love slavery better than liberty. They have pulled down our glorious emblem, and run up in its place the miserable palmetto branch, with the trail of the serpent over it. They have blotted out our National holiday from their calendar. They have hissed our National anthems on their stage. They have ceased even to pray for the President of their own choice, who, in an evil hour for himself, has listened, and fallen a victim to their wiles and their seductions. They think that the rule of the majority is inconsistent with the safety of their idol. It is they, and not we, who insist that there is an irrepressible conflict between our two great systems of labor—that the one wants protection, while the other is injured by it. They are jealous of the growth of the Free States, and alarmed by the revelations of the recent census. They want to get away into a government, where the minority shall bear rule. We may purchase peace by allowing them to govern us, but on no other terms. To secure it, we must abandon the idea of a Tariff. No concessions short of this will satisfy them. I know that trade is timid, and not always as proud or conscientious as it ought to be. It must be remembered, however, that it can purchase no solid privileges at the price of liberty. Nothing better than a hollow truce was ever patched up at the expense of manhood. They think meanly of us now, or they would not insult us by their menaces. We shall give them new reason to despise us, if we yield to their demands. The Dutch merchants paid a high price to the Japanese, when they agreed to spit and trample upon the cross, in order to secure their trade, and the Japanese paid them back with the contempt which they deserved. How will the little sovereignty of South Carolina strut and swell in vain-glorious pride, when she finds a great community, of twice her size, and a hundred times her wealth, on its knees before her, begging for mercy, and for trade, on any terms! It was not thus that the old Dutch Republic acquired her renown and wealth, when Van Tromp and De Ruyter swept the Channel with the broom at their mast-heads. It was not thus that lordly Tyre, whose merchants were princes, gathered the riches of the world into her lap. It was not in that spirit, that proud Genoa manned her galleys for the empire of the seas. It was not in that spirit, that her still prouder rival, the Queen and the Bride of the Adriatic, exacted the homage of the passing cruiser, and reared the Lion of St. Marc at the gates of the Imperial City

of the East. It was not thus that Philadelphia shone, when the spirit of her merchants was incarnate in her Morris, and the nerve of her Press illustrated in her Franklin. It is not thus that her stout-hearted mechanics, and her strong-armed working men—that turbulent class, who are expected to do so much mischief—think and feel now. I would trust the honor of the State, and the safety of the Republic, to their keeping.

“But what is it that these States demand of us? They have asked for nothing. Why should we hasten to prepare unsolicited offerings? Why should we wreath our garlands, and offer voluntary oblations upon their altars, in the vain hope of appeasing them? Are these men to be reasoned with? Will anything satisfy them? Is there anything in our laws that is wrong? That is not pretended. Is there anything that looks unfriendly? If there be, I should be willing to rectify it—but not now. We can afford to be magnanimous: we cannot afford to be misunderstood. They would misconstrue the motive, and the act. It would be taken as a confession of guilt, and an evidence of cowardice. Have our past concessions brought us any permanent peace? How was it with the Missouri Compromise? How was it with the Compromise Bill of 1833? These are the bitter fountains, whose waters we are now drinking. These are the dragon's teeth, from which a harvest of armed men has sprung up. The question could have been settled in 1820. It was only postponed, and rendered more difficult by these concessions. They have taken an undue advantage of our love for the Union. They have been encouraged by our concessions to rise in their demands. It is our hesitation—our want of firmness—that has given birth to the existing rebellion. If we had put forth our strength at its first appearance, it would have subsided at once. It has gathered head from our delay. It will go down as soon as the lion of the North shall awaken from his sleep, and startle the country by his roar. New York and Ohio have already girded themselves for the battle. Pennsylvania is still sleeping. All that is now wanted is the expression of her potent voice. Every drop of blood shed in this contest will be on the heads and the consciences of the timid advisers, who have counseled peace and advised concession. It was a philosophic remark of the celebrated Junius, ‘that fear admitted into public counsels betrays like treason.’ I do not impute a treasonable intention to the President himself. It is to his pusillanimity, his weakness, and his cowardice, however, that we are indebted for the mischiefs which now threaten us. The effect is as fatal as treason itself. Instead of talking of concessions, the cry, ‘To arms,’ should ring out from this point, through every valley, and along every moun-

tain top in Pennsylvania. If we hesitate much longer, the programme of the traitors will be extended from Washington, to Philadelphia and Harrisburg. They will expect the former to surrender at discretion. What kind of a defense we shall make here, is more than I can say.

"And now, as to the duties of our own great State in this extremity. No petty province is this, which we represent here this day. Pennsylvania—second in rank, and first, as I think, in position and power, in this great family of nations—standing abreast of the whole advancing column of the Slave States, with one foot on the Atlantic sea-board, and the other on the tributaries of the Mississippi—leaning upon the shoulder of her first-born offspring, the young giant of the West, and supported in her rear by the powerful State of New York—holds a place in our chart, which has justly earned for her the proud distinction of the Keystone of the Federal Arch. Nor is this any mere idle party designation. It has a higher significance. It is her place in history. It was here that Great Britain struck, to reach the heart and centre of the great confederacy which rebelled against her rule. It was around Philadelphia, as the pivotal point, that the tide of battle rolled, while the scales hung doubtful, in the darkest hour of that arduous and protracted struggle. It was to save Philadelphia, that the blood of our Fathers crimsoned the green herbage, on the pastoral banks of the Brandywine. It was to save Philadelphia, that the same blood flowed anew, amid the darkness and confusion of that disastrous morning, in the streets of Germantown. I have a right to speak of it; an ancestor of my own was there. It was to relieve Philadelphia, that the American army wintered on the frozen ground at Valley Forge. It was to relieve Philadelphia, that the same army, under the lead of its great chief, turned upon its pursuers, like a hunted stag, on that wintry night, when it launched itself amongst the ice drifts of the Delaware, and lighted up the streets of Trenton, and the hearts of the Colonists, with the blaze of its artillery. Pennsylvania, with her Western and Northern frontiers a wilderness, was the Keystone then. Pennsylvania, with her Western and Northern sons—a mighty host, made rugged by toil, trained alike to the use of the rifle and axe, and instinct with that love of liberty, which animated their Revolutionary sires—Pennsylvania, comprising within herself the population, and more than the power, of the old thirteen—is the Keystone still, in war as well as in peace. While she maintains her place, that arch will never fall. She was one of the first to put her name to that solemn league and covenant which made us one people. The smoke of battle was then upon

her hands. Those hands will be darker yet, and redder yet, before she will permit that covenant to be torn, or a single signature erased.

"Aside, however, from these responsibilities, there are peculiar reasons, which make it her duty to speak out now—not in the language of boastfulness, for that would not become her—but of stern and solemn admonition. The administration of the affairs of this great nation has been confided to the keeping of her sons. Pennsylvania is now on guard at the Federal Capital. She will be expected to stand sponsor for their loyalty. It is but too apparent now, that they have brought reproach upon the mother that bore them, by the betrayal of the trust that was committed to their hands. The President of the United States, or at least the constitutional advisers whom he has assembled around him, have been openly plotting the ruin of this Republic. The denial of the right to coerce—the deposit of enormous quantities of the munitions of war in the hands of the public authorities of South Carolina—the refusal to strengthen the defenses of the National fortresses—the exposure of a mere handful of men, to the risk of butchery by an excited mob, in the face of a community which had given public notice of its intention to throw off its allegiance—followed by the disgraceful necessity of a backward movement in the face of a rebellious subject, so contemptible in its resources—and the outgivings of the traitors themselves, as to the complicity of the President, have settled this question beyond a controversy. But this is not all. The opinion of the President and his Attorney General (now Secretary of State) are supposed to be a reflex of the opinions of the people here. It has been confidently asserted, and believed at Washington, that our own great State will follow the malcontents in their Hegira, and haul down that glorious banner, upon which her own star is one of the fairest and the brightest. With the estimate formed by these madmen of the free laboring men of the North, it is as confidently expected, that the suspension of commercial intercourse with them, will beggar our mechanics and operatives—that famine and destitution, gaunt and haggard, will stalk naked but armed, through our streets, clamoring for bread—that our warehouses will be sacked, and our printing presses destroyed, and that we shall be driven again into their arms to escape a still greater calamity; and the tone of the late Philadelphia meeting, and the obvious terror and self-abasement which pervaded it, are taken as the evidences that we are all trembling in apprehension of these results. And these, it seems, are the motives to rebellion—these, the hopes that animate the madmen, who would fire the

temple of our liberties, and reduce it to a ruin. If this be so, it is time to undeceive them for their own sakes, by teaching them that Pennsylvania will stand, as she has ever stood, by the Union of these States—that upon this question, we shall be, as we have ever been, a united people—and that the laboring men of Pennsylvania, instead of being the white slaves—the hungry mob—which they suppose, are men and freemen—intelligent, self-reliant and independent, and able, not only to earn their bread and vindicate their rights, but to resent and punish, if necessary, the insult and contumely to which they have been thus subjected, with the strong arms which God Almighty has given them. On such a question as this, I would not insult my auditors by any party appeal. I sink all party distinctions in the presence of the great overshadowing issue which involves the preservation of that Union, which is our common safeguard and our common inheritance. It is our Democratic brethren of this State, who are insulted by these suspicions of disloyalty. I do not entertain them. I assume that every honest, true-hearted member of that party, is as much attached to the Union as I am. The recent excitement in Pittsburgh, has furnished the proof of it there. If disunion purposes were charged in the call of the Chicago Convention, it was not upon any voter of the North. It was to the Southern leaders of that party only, that such treasonable sentiments were imputed. They affirmed the charge, by refusing to co-operate with their Northern brethren, and rent their party in twain, to accomplish their traitorous purpose of dismembering the Union. It was that conviction that palsied the arm of the Northern Democrat. It was his unfortunate association with the apostles of secession, that broke up the power of that once formidable organization in the Free States. The Republicans took advantage of it, and went into the battle with the device emblazoned on the standard, 'The Union of these States must and shall be preserved.' That was their tower of strength. That was their labarum. It was by that sign they conquered. It was by the magnetic force of that appeal to the strongest instinct of the American heart, that they drew the very bolts and rivets which held that organization together. I trust the Democratic party here will profit by this experience. The award of the ballot-box was but the declaration of the people, that this Union must be preserved, and woe to him who shall undertake to gainsay it, or to make it void.

"But it will not be made void. It is not in the order of Providence that this great nation shall perish on the very threshold of its high career. It has just expanded its wing for a flight of centuries. No man can read the story of its birth, without seeing

the finger of a superintending Providence, directing its path through darkness and disaster, as distinctly as the beacon light which flamed in the midnight heavens in advance of the armies of Israel. No man can look back upon its progress, and realize the blessings which it has already conferred upon man, and the still greater blessings which it foreshadows, and then sit down in gloomy skepticism as to its future without a doubt whether the same Providence still continues to govern the affairs of this world. It may have its vicissitudes of fortune, like all things human. The flag of our Union may plunge behind the storm-cloud, and bury itself occasionally in the bosom of the tempest, but it will emerge again—that glorious emblem of our power—it will emerge again—that constellation of our hope—from the darkness that may overshadow it—refulgent as with the splendors of a new dawn—flinging off the vapors which have hung about its folds, and hanging out, as of old, its signal of hope, and freedom, and deliverance to the nations. A hundred generations shall yet sit down under its shadow, and bless the hands that reared and the hands that have defended it.”

When he finished even one of his opponents, who bore a distinguished Philadelphia name, described his remarks as an “elegant, refined and eloquent exordium,” and himself as “so overwhelmingly powerful in oratory.” The Philadelphian had, himself, proposed resolutions looking to the repeal of the Pennsylvania law against fugitive slave hunting, claimed to be unconstitutional by the South and a violation of the Federal compact. It was believed that if this was repealed the seceding States would return. The effort to secure this result was the one Mr. Williams’ oration aimed to defeat, and as the movement had its most influential leadership, probably, in Philadelphia, Mr. Williams made this special attack on that element, and another member from the metropolis, in return, on the 21st of January, twitted the Pittsburgh orator on leading that city in repudiation of some of the bonds held by the speaker’s own constituents. The reference struck as fine fire from the Alleghenian’s flint as it ever gave off probably, at least in retort.

“In the Philadelphia *Ledger* of Saturday,” said an editorial in the Pittsburgh *Evening Chronicle*, “we find a report of the speech of Mr. Williams, in reply to an

attack made on the people of Allegheny county by Mr. _____ of Philadelphia, which seems to have made a deep impression on our Eastern friends. We subjoin a passage or two. Alluding to the charge of being repudiators, made against our people, Mr. W. argued to show that they were right in their opposition to the railroad tax, and then said: 'But let us see how Philadelphia acted in these cases herself. She has obligations herself. She has two millions and a quarter in the Sunbury and Erie Railroad. It is a bad investment. What does she do? The Board of Trade meet and pass resolutions, (I gleaned the facts from the public newspapers, and may not state them with entire accuracy, but I can give their substances), declaring that the investment will be lost unless they can obtain relief from the State; and the means devised was the appropriation of one-half of your public works to that purpose, after the other half had been given to the Pennsylvania Railroad Company, of which that city was the largest proprietor—one-half of whose capital stock she herself owned. Well, sir, she votes these public improvements into her own pocket. She commands some seven-teen votes in the House; and I do not undertake to say how many in the Senate; she has made a bad investment; she comes to the State for relief; she plunges her hand into the treasury and helps herself. Now, when my Philadelphia friends talk to me of "repudiation," may I not well remind them of the fact that they make good their own bad investments and pay their own debts, by plundering the treasury? May I not say to them with regard to their votes, as Falstaff said to Prince Henry on a memorable occasion, "When you are King, Hal, rob me the exchequer." With the same means and appliances we could pay our debts too. Have they a right, however, to reproach us?'

"The *Ledger* seems greatly pleased with Mr. W.'s remarks, and alludes to them in complimentary terms. Referring to the discussion, it says Mr. W. made a 'reply which, for power, eloquence and able reasoning, is seldom excelled in any legislative body. The bold stand he takes for the right and authority of the people over their own property, and against unconstitutional enactments, which would deprive them of it, is worthy of Patrick Henry himself. It is rare that such speeches are heard in the Legislature of this State. If there were more of the same spirit, and the same recurrence to fundamental principles of popular rights, which underlie all constitutions, we should not have the Legislature so frequently usurping power not delegated to it by the Constitution, nor Courts coming in conflict with public sentiment founded upon common sense, common honesty and common liberty. Hitherto we have differed from Mr. Williams in regard

to the obligation upon Allegheny to pay the bonds it issued, because they were issued under the forms of law by legally authorized persons. But there is no logic like the logic of facts, and the most certain way of seeing the force and bearing of a principle is to have it applied to oneself. The city of Philadelphia would this day have had three millions of dollars added to its present debt by the act of its County Commissioners, in lending out of the county treasury that amount to the Sunbury and Erie Railroad, if the timely interposition of the people in town meeting had not stopped this usurped authority. In fact, radical and fundamental principles of right, when wrested by power from the people, are always stolen from them under the forms of law, and, for the peace and security of society, there ought to be some remedy short of revolution to arrest acts of unauthorized power."¹

Mr. Williams voted against the Virginia convention, as an unconstitutional thing—that no State could make a compact with any other State—and on February 1st raised his voice for offering a prepared militia to the government at once, as the South was preparing for war. To realize the standing Mr. Williams had won by this time needs but a glance at a paragraph of the report of the correspondent of the Philadelphia *Evening Bulletin* on February 8th:

¹ The entire speech, which, because of the exigencies of space, must be omitted, may be seen in the *Legislative Record* for 1861 on pp. 156-7-8. The whole address is broad, high-minded and conciliatory, and it is unfortunate that, for the sake of showing the *Ledger's* attitude, only a small part can be quoted. The quotation does not do justice to its statesmanlike poise. It was in this that he referred to the bond question as "that greatest of questions, which constitutes my mission here."

The Harrisburg correspondent of the *North American and United States Gazette* of January 18th says: "Copies of the *London American*, [December 18th] brought over by the last steamer, have been passing about the House and have been very eagerly read. They contain a letter written by Thomas Williams of Pittsburgh, to Captain Schenley, of the English army. It has been very generally read and commanded high encomiums for the remarkable clearness of style and the force of its statements. It is a *résumé* of the history of the leading events, both military and civil, which have occurred since the breaking out of the rebellion up to just before the meeting of Congress. He was most heartily congratulated upon all sides by his fellow members of the House." A copy of the article, which occupies a page and a quarter, is among the Williams papers, and abundantly warrants the above expressions about it. Even at this distance of time it is remarkable for its judicial, impartial tone. In a letter of December 10, 1861, Captain Schenley says the *London Times* wanted the letter, "but that paper has to my mind behaved so shamefully throughout the American difficulty that I flatly refused a document at once so valuable and so convincing." In another letter he states that he showed the letter to Lord Palmerston and Sir John Russell, who were much impressed by it.

A letter of January 26, 1861, shows that Lincoln, through his law partner, who came on to Harrisburg to discuss the matter of a place in the Cabinet for Cameron, sought Mr. Williams' advice, urging him to express himself in a private letter. Williams said he didn't know Lincoln; the reply was: "He knows you very well."

"I shall begin with Williams, of Allegheny," he wrote, "called popularly in your city, the 'Great Repudiator.' As all know, who have heard of him, he is a lawyer by profession, and has been at the bar about thirty years. Born in Westmoreland County, he long since removed to Pittsburgh. Standing at the bar of that city as one of its prominent lawyers, and devoting himself earnestly to his profession, he has never until now held any public position, save a three years' term he served in the Senate full twenty years ago. In that body he held a leading position, when Judge Pearson, Charles Sullivan, Frederick Fraley, 'Harry' Spackman, Charles Brown, and men of that class led in its debates.

"In person he is of medium height, with no particular indication of muscular power, although he must be possessed of a very good constitution. He is fifty-three or four years of age, and though his hair and beard are tinged with gray, he would pass anywhere for forty-five. His eyes are of bluish gray, large and full; his face round, and surmounted with a protuberant nose, decidedly inclined to point to the left. The forehead is fuller in the region of ideality and marvellousness than it is in the *locale* of the perceptive and reflective faculties. The head is not very large, and in this particular is a contradiction to the phrenological theory that minds of large powers must have a large development of brain.

"As a speaker his elocution is not graceful, and his voice, though powerful, is not musical. To wonderful command of language he adds great beauty and choice of diction; his phrases abounding with classical allusions, seeming to bubble up to the surface; his argument is compact and tersely logical, seldom wandering aside to indulge in rhetorical episodes when he enters upon his themes; they seem to form a necessary illustration of the point he is endeavoring to make. Such is one of the most powerful of the men now leading our State Councils."

This is followed by accounts of Ball of Erie, Armstrong of Lycoming and Gordon of Jefferson, of whom Ball was the chief parliamentarian of the House.¹

¹ The *North American and United States Gazette* correspondent on February 1st said of Mr. Williams that: "His recent exhibitions as a forensic gladiator have left more than one black eye right and left, and his enemies will punish him severely when they get him across the rope." This was in regard to a general desire to have him on the investigating committee. He says the judiciary committee is where the real battle will be fought, and that it embraced the very first talent in that body—Scott, Williams, Smith of Chester, Shannon, Strang, Banks, Vincent, Brown of Northumberland and Dennis. He said if Campbell or Cuyler, the railway counsel, came up they would, no doubt, "prepare for death, solemnly, religiously, for if Williams should put on his leonine mood they will vanish from earth and leave not a wreck behind." In a letter dated February 10, 1861, Mr. Williams says of Governor Curtin: "He does not pull with the Republican wing of our party & has lost their

The real fight of the session began on February 15th with consideration of the two railway measures. It is not the purpose here to enter into details of the contest. The railway interests secured their votes early and rushed the measure through—as was evident it was to be done—early in the session. The question, as well as the means taken to accomplish this result, aroused Mr. Williams to the utmost, especially the points at issue in the repeal or “commutation” of the tonnage tax imposed on the Pennsylvania Railroad. “My friend from Philadelphia,” said Mr. Williams, “* * * even goes so far as to complain of the persecution with which this unfortunate company, receiving a revenue greater than that of the whole Commonwealth of Pennsylvania has been followed! This company which sits here at Harrisburg enthroned in State with its agents and its emissaries filling your public houses and your lobbies to dictate to this Legislature what they shall do and when they shall do it and how they shall do it, is certainly not by any means an object of sympathy.” “I was amazed,” he says again, “when I saw this bill reported by a Committee of this House, proposing upon its face, amongst other things, to donate to a mammoth corporation eight hundred thousand dollars of your money, already sacredly appropriated to the purposes of the sinking fund, to the payment of the public debt of this State. And then this money is to be lent out by this grand monopoly to this railroad and that railroad by way of securing the votes of members from the counties through which these railroads pass—a tub thrown to the whale.” Again he says: “You may do this thing and you may do it in a hurry. Perhaps it is policy that you should do it thus. Put this bill upon the files, wait a few days, and there will be a storm of indignation burst up from every quarter of this Commonwealth that will shake the Capitol to its foundation.”

confidence because he has taken counsel entirely with the *people's party* which votes generally with the Democrats.” In the same letter he tells of invitations from various parts of the State to address them, the leader of one deputation attempting to reach Mr. Williams' heart by repeating the entire exordium of his eulogy on President Harrison!

¹ *Legislative Record*, 1861, p. 375.

"This case has a history," said he in the same speech, "with which my worthy friend [from Philadelphia] is not perhaps familiar. I recollect something about it, although my memory is not a good one. When the Pennsylvania Railroad made its application for this charter that application arose out of a feeling of rivalry and competition between the two cities of Philadelphia and Baltimore. Philadelphia had no idea of building such a road; but Baltimore came here to obtain a renewal of the charter of the Baltimore and Ohio Railroad Company, which would have furnished another and independent means of communication, giving to the city of Baltimore, however, some advantage over Philadelphia. Philadelphia resisted; she offered to build a railroad of this description herself. She offered in addition thereto, looking to the probable rivalry and the injury that might be sustained by the Public Works in consequence thereof—she offered to pay a revenue of five mills upon the dollar, upon all tonnage carried over that road forever. I think I am not mistaken in saying it was five mills; it is now three. It was her own offer, and she succeeded by these means in procuring the charter, and in defeating the application of the Baltimore and Ohio Railroad Company to obtain a right of way through this State. The jealousy of Philadelphia defeated that application. She obtained all she desired upon those grounds. We were shut out; we were denied the privilege of taking any other means of transmit to the eastern sea-board, except those to be furnished by the Pennsylvania Railroad Company. There was a provision, if I recollect aright, in the charter of the Pennsylvania Railroad Company, enacted in 1846, that if they would put under contract in good faith, so many miles of their road adjacent to the city of Pittsburgh, (I do not recollect the number of miles,) then all the privileges granted by an Act passed at the same session, should cease. They did put their road under contract for that purpose."

"Sir," said he farther on, after he had shown how these funds had been pledged to the public debt, "I dread the power of this corporation. I was in public life when the Bank of the United States was described as a monster, an anaconda—when our Democratic brethren were in the habit of expressing the opinion that it was winding its snaky coils around us, strangling us to death as the serpent strangled Laocoon.¹ Now, what have we here? Why, this immense corporation overshadowing the whole State—binding with an iron chain, the city of Philadelphia and the city of Pittsburgh—with all its ramifications, and

¹ *Legislative Record*, 1861, p. 376.

its proposed execution of ramifications—dwarfs that monster bank into nothingness. It can bring enough of its troops here to invade the Capitol, and I was almost disposed to say, to defend this State in a case of invasion from the South. If we are helpless this company is not.

"I dread this irresponsible power, which overshadows this State and dwarfs everything beneath it. I think our liberties are not safe under such influences. I think the time has come to summon the people of Pennsylvania to the rescue, to proclaim the alarm from the top of this Capitol in such a way that it shall reach every hill and valley in this Commonwealth. The people will respond to that call—my life on it."

Again he says:

"The learned gentleman is pleased to charge me with hostility to this company. Why, sir, I entertain no feeling of that sort; but if the Pennsylvania Railroad Company or any other railroad company in this State embarks upon a grand scheme of public robbery—so long as I am here, as the representative of the people, though I stand in the breach alone, as Horatius stood in the breach at Rome, I shall be at all times ready to defend the people—not the people whom I immediately represent, but the people of the State at large. But from the language in which the gentleman indulges, I suppose it is to be considered that an offense against that company is something like what lawyers call the *crimen locsis magistratis*—that is, the offense of treason. It is the majesty of the Pennsylvania Railroad Company which overshadows this Commonwealth, against which I, an humble individual, have ventured to rebel. That is my crime. Therefore, it is that my worthy friend from Schuylkill thinks I am not quite so wise a man as I ought to be, or not quite so wise as himself.

"Well, sir, I owe no favors to the Pennsylvania Railroad Company. I have tried causes for them occasionally, and they have paid me, and the account was squared. I do not travel upon their free tickets—not because they do not offer them to me, but because as a member of the Legislature of Pennsylvania, I feel that I cannot do it so long as they are knocking at your doors and begging for favors, however small they may be. This refusal on my part is no evidence of hostility; but it is evidence of a desire simply to keep myself in such a position as to enable me to do them justice without the suspicion of bias."

¹ *Ibid.*, p. 381

At the close of a long and able speech, to which extracts cannot do justice, he exclaimed: "My own hands shall not be stained with it." The bill was passed by a vote of 60 to 38. "The great fight over the passage of the two great financial measures of the session is over in the House," wrote the correspondent of the *North American and United States Gazette* of Philadelphia on February 16th. "The debate was, at many of its stages, very exciting and very interesting. Williams of Allegheny was the chief debater in opposition to both, but his opposition to the Sunbury and Erie bill was less marked and bitter than it was to the tonnage tax. Against the latter he showed a virulence that was remarkable for its intensity. There is no use in denying his ability as a speaker. He is beyond all question the most accomplished intellectual athlete in either House. Had he possessed half the skill 'to filibuster,' under the rules, which he evinced in argument, he would have held those two bills at bay for a week. But he is either too high-minded to condescend to parliamentary strategy for mere purposes of delay, or he does not understand very well legislative maneuvering. Had Ball been assisting him the Sunbury and Erie would yet have been hanging fire in Committee of the Whole."

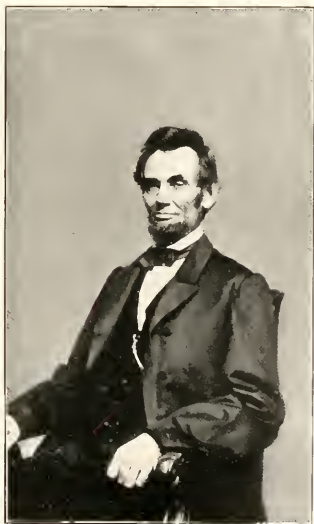
The arguments on the other side have not been given, because no reader of to-day, in Pennsylvania at least, needs them, any more than a citizen of Germany needs arguments for favoring their army, or an Englishman needs them to warrant his vote to favor their navy. The dominant elements in all three lands are determined to have these things and to care for their welfare, at any cost.¹ The tonnage tax was, of course, considered a menace to the entry of outside freight into the State. The dominant forces in the Senate, led by McClure within and President Scott of the Pennsylvania Railroad without, with all the measures known to the politics of that day—as well as some other days—soon secured its passage there.

¹ Colonel McClure himself has given the general tenor of the arguments used on the railway side in his interesting series of articles on Pennsylvania politics, at this writing current in the *Philadelphia Press* and *Pittsburgh Gazette*. He shows Senator Penny of Pittsburgh, who was to the Senate on this question what Williams was to the House, to have been a powerful leader.

Scott was one of the "men who do things," and it was well known, as Colonel McClure has stated in a recent conversation, that persuadable men were secured by the railway interests by the means that would secure them whenever it was necessary. It was political warfare. These events and the contemporary railroad bond cases in the Supreme Court led to petitions from the people over the State in protest against this action, and some petitions even went so far as to call for the removal of the judges of the Supreme Court. "Mountains," the correspondent of the *North American and United States Gazette*, said, on the 16th, that there would be something interesting on in a few days. "I refer," said he, "to the presentation of an address by Mr. Williams of Allegheny, for removal of the Supreme Judges." One of the petitions, namely, from Washington County, called the doctrines of the judges "immoral, incendiary and revolutionary." The public feeling was so great that many a legislator grew apprehensive when he thought of his first meeting with his constituents. It was plain that the battle was only begun.

National affairs, meanwhile, produced a cessation of hostilities. The new President-elect was on his way East, and by the 13th a committee of twelve, six from each House, Mr. Williams among them, had been appointed to go West and meet Mr. Lincoln to extend an invitation to visit the Legislature. They met him at Rochester, about thirty miles below Pittsburgh, and escorted him into the latter city, which they reached at 8 P. M. on the 14th. The committee returned and announced a visit for the 22d, Washington's Birthday. "The members speak of him," wrote a correspondent for a Philadelphia paper, "as a man of the most frank and open character, as having no pretension to style in dress or elegance of manner, though he does not lack refinement or courtesy. A member of the committee declares that he is a most diffident man."¹ About a week later he arrived and participated in the ceremonies of the first President's birthday. It was in the Hall of Representatives. After

¹ "Mountains," in the *North American and United States Gazette* of February 16, 1861. Philadelphia Library.



PRESIDENT-ELECT LINCOLN

Halftone of a contemporary photograph by Brady,
negative in possession of L. C. Haudy,
Washington, D. C.

official greetings the tall westerner arose and, after reference to his visit in Philadelphia, said:

"Under the kind conduct of gentlemen there, I was, for the first time, allowed the privilege of standing in old Independence Hall [enthusiastic cheering], and to have a few words addressed to me there, affording me an opportunity of expressing myself. I regret that I had not more time to express something of my own feelings, excited by the occasion—something to harmonize and give shape to the sentiments that had really been the sentiments of my whole life. Besides this our friends there had provided a magnificent flag of our country, and had arranged it so that I was given the honor of raising it to the head of the staff. [Applause.] And when it went up I was pleased that it went to its place by the strength of my own feeble arm when, according to the arrangement, the cord was pulled, and it flaunted gloriously to the wind, without an accident, in the light-glowing sunshine of the morning. I could not help hoping that there was in the entire success of that beautiful ceremony at least something of an omen of what is to come. [Loud applause.] Nor could I help feeling then, as I often have felt, in the whole of that proceeding I was a very humble instrument. I had not provided the flag; I had not made the arrangement for elevating it to its place; I had applied a very small portion even of my feeble strength in raising it. In the whole transaction I was in the hands of the people who had arranged it, and if I can have the same generous co-operation of the people of the entire nation, I think the flag of our country may yet be kept flaunting gloriously." [Enthusiastic and prolonged cheering.]¹

It was well known that Mr. Lincoln's party and representatives of the committee were to leave for Washington the next morning, and never perhaps were greater precautions taken by the Pennsylvania Railroad and connecting lines; but some sudden developments of a threatening nature at Baltimore became known and Mr. Lincoln was taken by another route during the night, while Mrs. Lincoln, Mr. Williams' two daughters, General Sumner, Judge Davis, Captain Pope and the four young men, "Bob" Lincoln, John Hay, John G. Nicolai and Colonel Ellsworth, with Mr. Williams and other members of

¹ The same evening a reception was held at the hotel in Harrisburg by Mr. Lincoln, where the two daughters of Mr. Williams met Mrs. Lincoln, who requested him to allow the young ladies to accompany the party to Washington.

the committee, went on the regularly arranged train the next morning.¹ The few days to March 4th sped rapidly and there came the inauguration. Mr. Williams and his daughters, as Mr. Lincoln's personal guests, enjoyed intimate views of it. They heard the famous inaugural address, and it must have been an interesting moment to Mr. Williams when the venerable Chief Justice Taney—an old Dickinson College alumnus—arose in evident agitation to administer the oath of office to the first Republican President, and might have recalled how since he was raised to eminence by Jackson he had sworn in a long line of Democratic Chief Executives—Van Buren, Tyler, Polk, Taylor, Fillmore, Pierce and Buchanan—and this last oath was to be one which should not only sound the death-knell of the Chief Justice's party's supremacy for many a long day to come, but assure a fearful civil war in the very words of the oath itself.

The inaugural ball brought out an amusing incident that illustrates the absentmindedness of Mr. Williams as well as his dependence upon his wife in matters of dress. The President's set, in the opening quadrille, was composed of Mr. and Mrs. Lincoln, Mr. Williams and his daughter, Miss M. D. Williams, "Bob" Lincoln and Mr. Williams' other daughter, and John Hay and a lady whose name cannot now be recalled. While they were waiting for other sets to form Mr. Williams looked down at his feet somewhat ruefully and whispered in mock alarm that he had forgotten to put on his shoes! The inaugural ball, so far as he was concerned, therefore, had to be danced in his morocco slippers.

¹ Miss M. D. Williams, one of these daughters, recalls being frightened at the faces of the mob at Baltimore and admiring the bravery of the boy, "Bob" Lincoln, in presenting himself on the platform at the mob's call. At Washington Mr. Seward met Mrs. Lincoln and party and took her and the Misses Williams in his carriage to Willard's, where Mr. Lincoln was already established. Mrs. Lincoln proved a good conversationalist, but Mr Seward was so inresponsive or absentminded that the young girl beside Mrs. Lincoln vetoed him a "bore." Later she realized his responsibilities and more than forgave him. When they reached Mr. Lincoln's rooms, "there he sat," said Mrs. Williams, "in an armchair with Tad and Willie climbing all over him a beautiful picture in my memory. That night Mr. Lincoln held another reception and, at Mrs. Lincoln's request, the Misses Williams assisted her. Later, in his own apartments, when Mr. Lincoln asked Miss Williams to sing, and she questioned him as to what kind of music he liked, he replied: "Sing me something sad." In relating these incidents Miss Williams said: "His face was indeed the noblest I ever saw, but when he smiled it was one of the most attractive."

ION BALL,

IN HONOR OF THE

INTEGRATION

OF
Abraham Lincoln
AS

PRESIDENT OF THE UNITED STATES.

WASHINGTON, D. C., MARCH 1, 1891.

- MARCELLI—In general,
- QUADRILLE—Schoffe,
- LANSCHERS—Johnson,
- WALTZ & POLKA—Jurison Ball Dance,
- QUADRILLE—Sprink,
- LANSCHERS—Washington,
- GALLUP—Athletic Table-top,
- QUADRILLE—Construction,
- LANSCHERS—Metropolitan,
- WALTZ & POLKA—Fidelity,
- QUADRILLE—Marble,
- LANSCHERS—New York,
- WALTZ—Dance on the Ocean,
- QUADRILLE—Hunky Billie,
- LANSCHERS—Fidelity,
- GALLUP & STEPHENS—THE,
- QUADRILLE—THE,
- LANSCHERS—Fidelity,
- REFORM & WALTZ—Avenue B,
- QUADRILLE—Fidelity,
- LANSCHERS—Fidelity,
- WALTZ & POLKA—Waltz,
- QUADRILLE—Fidelity,
- WALTZ & GALLUP—Fidelity,
- L. I. WEBER—MUSICAL DIRECTOR.

INAUGURAL BALL CARD

Half-tone of first and second pages of original in possession of the Misses Williams, Philadelphia

This friendship of Mr. Lincoln had no doubt much to do with the rumors that at once arose in the press, especially in Pennsylvania, that Mr. Williams was to receive some national appointment. The Harrisburg correspondent of the *Pittsburgh Gazette*, under date of March 14th (1861), said: "Mr. Williams, as has already been stated in the *Gazette*, occupies a very enviable and distinguished position here. His speeches have been the speeches of the session, and have given him a national reputation. * * * It is a matter of conversation here that the Administration are about to confer upon Mr. Williams an appointment. It is stated by some that he will be nominated by the President to the vacancy on the Supreme Court bench. For this distinguished position Mr. Williams is peculiarly qualified by his profound knowledge of law, and brilliant attainments. By others it is said he will be offered a foreign appointment." The selection of Senator Simon Cameron for a Cabinet position left a vacancy in the United States Senate that at this time brought forward the names of Wilmot, Williams, Curtin and others to fill it. Pittsburgh claimed the right to name this man. A leading paper¹ of that city said editorially:

"We want from Pennsylvania, a man with the ability and power to do something for our divided and distracted country. * * * The moment for action has come. The question of slavery has been swallowed up in the question of the Union. Let Pennsylvania send to the Senate a man of mark. She has such men, and although it is not for us to dictate, we may as a Pittsburgher, be allowed to suggest the nomination and election of Hon. Thomas Williams, of this city, now one of our representatives in the Lower House, as eminently fit to be made. ——— Mr. Williams is an educated statesman—a lawyer of great ability—an orator who has few peers in any of our forums—a well-advised, large-thinking, patriotic citizen. He might with great propriety have been called to Mr. Lincoln's cabinet, but Mr. Cameron occupying the position from Pennsylvania, we know no man more fit to succeed him than Thomas Williams. He is a man whom difficulty and danger neither appalls nor deters. His perseverance is only equalled by his calm judgment and his powers of argument. ——— Coming from

¹ Probably the *Post*—the clipping is not identified.

us, some may suppose these high encomiums ironical. We have had our battles with this gentleman, but they were upon local questions. * * * He was a brave and skillful opponent, and fought for what he believed to be right. He yielded no inch of ground while it was tenable, and omitted no argument to sustain his cause. But now a nobler and more important field of action presents itself, than the contest between bondholders and taxpayers. A Nation is divided against itself, and needs its strongest and most powerful minds to arrange its difficulties. Thomas Williams is the man for Pennsylvania to send to the United States Senate, in the present crisis, if he will consent to accept the position."

A big petition, signed by scores of eminent names in Pittsburgh, was presented to the other Allegheny members of the Legislature urging them to support Mr. Williams. Mr. Wilmot was chosen, however, and no one, perhaps, at this distance, could doubt his prior claim to it, even if the dominant element in the Legislature had been less intensely pitted in battle against Mr. Williams.¹

On the evening of April 12th news of an engagement at Charleston was announced, amidst great sensation. The session was to close on the 18th and there were great questions yet to be cared for. It is not possible to go into details of such a legislative body's proceedings, interesting as they are. The most important was undoubtedly the relief of the banks who, it was alleged, had forfeited their charters because of suspension of specie payments. In all these questions Mr. Williams took a conservative attitude. The session closed on the 18th with the singing of the national anthem, "The Star Spangled Banner."

Two days later an extra session was called by the Governor for the 30th instant, and on that occasion he announced in his message that he had already raised twenty-three regiments, and Pennsylvania's volunteers had been the first to reach Washington. He also called for provision for more troops. The message was referred to a special committee of seven, Ball being chairman and Williams one of the members. Army organiza-

¹ A letter of March 15, 1861, shows that Mr. Williams had enough votes to have prevented the election of Mr. Wilmot, or assured it, and he chose the latter and withdrew in favor of Wilmot. It also shows that his friends demanded that he should be recommended for the Supreme Bench or given a foreign mission, and explain the efforts of Wilmot and Cowan in his behalf.

tion was taken up, and, incidentally, of course the Governor's relation to it was discussed. This led to a telegram in a Philadelphia paper saying there was a breach between the Executive and Legislature, which created great indignation in the latter body. Some wished an investigation. "I look upon these things, entirely irresponsible in their character," said Mr. Williams, "as matters which are not worthy of the consideration of this Legislature. * * * Sir, I have been something of a politician in my time. I think that there is perhaps no man in this Commonwealth who has been more largely abused than myself. I am, however, perfectly willing, and have been on all occasions, to allow these presses a charter free as the mind. I have felt that they could do me no harm. Why, Sir, at the outset of this session the opinions I expressed in regard to the importance of maintaining at all hazards the integrity of this Union and using the strong arm of the government for that purpose, were denounced in the press of the city of Philadelphia as execrable. Now, those newspapers (* * *) are emulous in the endeavor to show who shall be foremost in advocating the same doctrines. I care nothing about these things. * * * I trust that we can live down calumnies of malice and the judgment of ignorance. Let our acts here answer for us, I desire nothing further."¹ The point which was the cause of this was largely due to the efforts of Mr. Williams to establish a system of accountability in regard to expenditures, that system to include the Governor, of course, as well as all others in power. This was construed as opposition to the Governor. On May 9th the question of accountability came up again in some able debates as one may often hear. In response to some member who touched upon it, Mr. Williams replied:

"He says I consult nobody—that I am my own adviser. In that particular he is a little mistaken. If he meant to say that I do not consult many of the politicians, or many of the living of whatever class, he is right. I know nothing about politics as a trade. I have none of the arts of the politician, and never

¹ *Legislative Record*, 1861, p. 1040.

had. Therefore it is, perhaps, that I have, during my life time, been almost invariably in the minority! Why, sir, I came into this body for the first time (except for a short period in 1840) in the ascendancy, with seventy-two men, I believe, elected upon the same basis, upon the same principles as myself; and lo! before I had been here two weeks, I found myself in my old place—in a minority! It has seemed to me as if that was my destiny—as if I had been born to it. However, it suits me very well. * * * —Well, sir, I know nothing about politics as a trade. I think I know something of it as a science. If I do not choose to consult the politicians around me, some of whom may be younger perhaps than myself, there are other sources of information that may be consulted. If I choose not to consult with the living, I can talk with the dead. I can go to the shelves of my library, and learn wisdom there. History is said to be philosophy teaching by example. If I want to know anything about the effect of this or that system of Government, I find my sources of knowledge there. * * * I look to the Constitution of England, from which we have derived all our best advices and our largest experience. I look to the history of a Government of which our own is almost a literal copy, and which has borne the blasts of time, as I hope our own will, for a thousand years. These are the authorities that I consult when I want light. I do not speak of my own knowledge. I speak from the experience, from the information which I have derived from sources such as these. The man who will not be made wise by them will never become wise.”¹

On May 15th he made a plea for more conservative financial methods. One of his objections to the commutation bill was its attack upon the sinking fund, and now when a new loan was to be made he urged that provision be made to pay it. “It is not a question,” said he, “of the ability of the State of Pennsylvania to pay; nobody doubts that; it is a question of the disposition to pay.” The then high credit of the State, he said, was due to the constitutional amendments of 1857, which provided a fund to pay her enormous debt. “From that day,” he continued, “light began to dawn in Pennsylvania.” Again, “What have we done at the present session of the Legislature? We have thrown away \$400,000 of our yearly revenue in the passage of a misnamed, delusive, monstrous ‘commutation’ bill. We have thrown

¹ *Legislative Record*, 1861, p. 1064.



MRS. THOMAS WILLIAMS

Halftone of a painting by Lambdin, about 1854, in possession of the
Misses Williams, Philadelphia

away another fund of three million and a half of dollars, the interest of which at five per cent. would amount to some \$175,000 a year. All this has been withdrawn, I may say, from our present revenue. And now, when we are called upon to provide for a loan of three and a half millions to meet the exigencies of this great national crisis, we are told that the loan can be readily negotiated because Pennsylvania is able to pay!" He showed how State stocks in 1842 had sunk so low as 34 cents on the dollar because the State did not make provision for payment of her enormous debt, and the moment she did her credit rose to par or nearly so. He favored a tax of one mill to accompany or follow the loan. This incident shows the solidity of the principles upon which he based his actions. It was not the Pennsylvania Railroad's plans and desires that he disliked so much as the unsound finance that he believed they represented in this instance—with him it was the right at any cost, not a system of transportation at any cost. And this did not preclude the possibility of his opponents believing, in all sincerity, that transportation welfare and the right were one and the same. The bill was amended with a half-mill tax and passed.

Mr. Williams was a doughty champion and withal a genial gladiator in his arena, who won the admiration and often the affection of his ablest opponents.¹ "Tom Williams," as he was known among intimates, notwithstanding his innate dignity, was a general favorite, so that when, on May 16th, the Speaker adjourned the House with a few words, there were loud calls for "Williams" from all parts of the room, and, at the Speaker's suggestion, he took the stand amid cheers.

"Gentlemen of the House of Representatives," he began, "I feel deeply honored by this unexpected call. I wish I were

¹ He was fortunate in having such rare advice as the following: On February 22d his daughter Maggie, who was with him, received a letter from her mother. "You must try," said she, "and not let your father carry his feelings outside of the Legislative halls—he must throw everything unpleasant off as he quits the door, & be friendly with all. Whatever measures of the Governor he opposes let it be in a moderate manner & then lay it aside for social enjoyment and friendly intercourse. He will accomplish more in that way (take my word for it) than any other." Mrs. Williams was a woman of rare tact and insight into character. She was also a woman of distinction, of bearing and manner. The accompanying portrait from a painting by Lambdin, about 1854, carries its own evidence of her strength of character.

in a condition to respond to it as it deserves. I should, however, be either more or less than man, if, under the influence of the feelings which have pervaded this hall and to which so loud an expression has been given this day, I could sit silent, making no response.

"We are about to separate—perhaps forever. We have, I trust, done our duty, and our whole duty; that is for others to pass upon. We have put the sword into the hands of our mighty men and sent them forth on a mission of patriotism, to fight, and, if need be, to die under the shadow of that flag whose glories have been so well enunciated and proclaimed this day in our great national hymn.

"We met, gentlemen, four or five months ago, in gloom; we part, I trust, in hope. The thunder of the ordnance in the harbor of Charleston—the rattling of the musketry upon the streets of Baltimore, when the blood of our own citizens and of the men who derived their lineage from the Pilgrims, dyed the streets of that rebel city—the electric summons of our Chief—all these coming together, have lifted a mountain from the heart of this people, and that great heart of the free and mighty north has gone out in one overwhelming burst of patriotism and wild enthusiasm that no nation has ever yet exhibited. [Applause.] Why, sirs, I thanked God—although the sound of battle is not music to me—I thanked God when the reverberations of those guns came up upon our ears. I felt that now the curtain was up, and the drama was about to open. I felt once more that we had a country. [Loud cheers.]

"The events of the last few weeks have developed in the eyes of the astonished world the amazing powers of a government that rests upon the will of a free and intelligent people. [Cheers.] Never since the preaching of Peter the Hermit, when all Europe was lifted from its foundation and precipitated upon Asia, has the world witnessed such a spectacle as we have just given forth. Never was such a response to the call of country witnessed in any nation. It has made me feel as if I were once more a man and had once more a country. It was the star that beckoned the wise men of the East, a mighty host of devotees, to the cradle of our Lord upon the plains of Bethlehem. It is the starry banner of our Republic, with all the associations of glory and renown and past heroism clustered around it, that has gathered the heart of this nation under its folds. [Loud applause.] That banner waves and it will continue to wave.

"I said at the outset of this session (and I feel proud that I am able to reiterate it now) that it was not in the providence

of God that this great nation should perish—that it had just expanded its wings for a flight of centuries. We now have the evidence of it in the facts we have witnessed around us. Why, look at our State. At the summons of our Chiefs, as at the horn of Poland, every mountain, every valley in the Commonwealth has poured out its rill in the way of contribution to this immense flood of patriotism—which absolutely requires Executive interposition, to check it. Did the world ever witness such a spectacle? Here are great strong men weeping like children that are denied the privilege of perilling their lives and perhaps spilling their blood in the defence of their country. [Applause.] I am, however, glad to learn from the communication read this morning, that the Secretary of War, a citizen of our State, suggests to the Executive of this Commonwealth, 'Let the county of Allegheny and let the "wild cat district" send a few more of their men.' [Cheers.] And we have them in numbers almost numberless. Three hundred thousand men, I am sure, could have been brought into the field from our single State. I think we should have taken upon our hands the job of disposing of this whole question. [Applause.] But it is in the way of being settled. Massachusetts is already avenged. The blood which dyed the stones of the streets of Baltimore has gone up calling for vengeance; and now a retribution is at hand. — 'Send them home tenderly,' said the valiant and kind-hearted Governor of that gallant State. 'Massachusetts desires once more to look upon the faces, the unmangled, undisfigured faces of her courageous sons.' She saw them; she gave them a soldier's farewell and a soldier's burial. Then she rose and put off her robes of mourning as King David did when he was told that the child of his affections had ceased to live. And now—mark it!—the guns of the men of Massachusetts—the descendants of the Pilgrims—the men who derived their lineage from Lexington and Concord and Bunker's Hill are frowning destruction over that rebel city. [Cheers.]

"This is the first act in the drama, which, with a proper exertion of energy on the part of the General Government, will soon come to a conclusion, which will result, not in mischief to this nation, but in the assurance to the world that we are what we have ever claimed to be—the greatest power upon the earth, [cheers] and that that flag, so well discoursed of to-day, and the adoration of which has become a species of religion amongst us, (if it has not always been so) will continue to wave as it has heretofore waived. Why should it not be so? There is a history in that flag. There is an epic in every star of it; there is a story of romance and heroism and loyalty and

courage in every fold. It tells of the bloody deck on which fought Decatur and Perry and McDonough and other heroes equally gallant who were identified with our history, and on which Lawrence fell. It tells too of the triumphs of our Revolution; it points to the victory of Yorktown as well as of New Orleans. It points again to the field at the Thames, where the lion-standard of England, described by one of her poets as having 'faced a thousand years the battle and the breeze,' went down before our glorious banner, the emblem of our power the world over. This is a part of its history. It will continue to wave. Aye, there is no man can assign a limit to the duration of this Republic. It has a destiny which it has only begun to work out. It is upon the threshold of its high career. This is but a temporary interruption; it will all pass over without injury, and will only result in strengthening and fortifying the conviction that we are a people the greatest the world has seen. Yes, gentlemen, Representatives, that banner will still continue to wave; and a hundred generations shall yet sit down and sing hosannas to the name of Washington." [Mr. Williams concluded amid enthusiastic, long-continued cheering.]¹

The remainder of the year 1861 was crowded with events of the greatest significance, but the people of Pennsylvania, in great numbers, while providing for the great national concerns lavishly—one might almost say—were still tenacious in holding more firmly than ever to their opposition to the railway measures. So great was their resentment over the recent commutation or tonnage tax bill that when, in a private conversation, one day Senator Clymer of Berks County told Senator A. K. McClure of the overwhelming landslide in the new membership of the Legislature against the railway measures, saying, "It looks as if we had you now," Senator McClure replied with significant precision: "Speaking *mathematically*, I think you have."² And it was true enough, both in the House and Senate. Mr. Williams was returned at the head of the Allegheny County delegation and his party elected the Speaker, John Rowe of Franklin County.³ Mr. Williams himself was placed second on

¹ *Legislative Record*, 1861, p. 1149.

² From a conversation between Colonel McClure and the author in the spring of 1974, with permission to use. In a Senate of 33 members the railway people had but 11 against the opposition's 22 votes.

³ On January 7th (1862) the Harrisburg correspondent of the *North American and United States Gazette* said: "It is evident from the debate of this

the judiciary (general) committee, and made chairman of those on Federal relations and State library.¹ By January 17, 1862, the tonnage tax battle was on again, fiercer than ever.² Mr. Hopkins asked for an investigation of corruption in the passage of the repeal bill of last session. Three days before the House had ordered the judiciary (general) committee to bring in a bill to repeal the tonnage tax commutation bill, and this was a companion measure, at which some objection was raised, Representative W. L. Dennis of Philadelphia raising the question whether this was not an investigation of a "dead body." This brought Williams to his feet.

"Now if it be true," said he, "as suggested by the gentleman from Philadelphia [Mr. Dennis] that there is no remedy here for the acts of past Legislatures, then our condition is a woeful one indeed. The House of Representatives of last session, the learned gentleman is pleased to say, is dead. Yes, it is dead, thank God! and more than that, I think it is in the condition of the body of Lazarus—it is tainted. Why, sir, I suggested, I think, in the last remarks I had occasion to make on this question at the late session—standing almost alone in this House, resisting what I regarded as a torrent of corruption sweeping wide over the Legislature—I said then that although I was not a prophet or the son of a prophet—although the Pennsylvania railroad company, with the revenues of a principality and with a power which no corporation in this Union has ever matched, might subsidize the press, might spike and muzzle the organs of public opinion—it was too vast a transaction to be kept from the people of this State—that it would find its way

morning, short as it was, that there is more aggregate talent, ability and power for discussion than there has been found in this Hall for many years. I have never seen such a house assembled here. Should any occasion arise which would call out its whole powers it will compare favorably with an equal number of the members of the Federal Congress." He recalls now Jefferson said any great cause would bring out men of great powers.

¹ *Legislative Record*, 1862, pp. 27 and 37.

² *Ibid.*, p. 54.

It should be noted at this point that Mr. Williams was one of the most intimate legal advisers of the new Secretary of War, Mr. Stanton, who called him to Washington for advice "upon certain judicial matters connected with the advance of our armies," within eight days after his appointment. (Telegram of January 23, 1862, among the Williams papers.) It was, in this case, for the purpose of asking Mr. Williams to draft a law for the construction of judicial tribunals for the territory recaptured and for maritime prizes. Mr. Williams made a trip to Fortress Monroe in consultation with General Wool on its relation to the colored people. A copy of a letter of January 16th of Simon Cameron's to President Lincoln shows that he, too, had thought of Mr. Williams in this connection and had suggested him to President Lincoln while he was head of the War Department. A letter of January 29, 1862, shows that Senators Wilmot and Cowan were interested in an effort to place Mr. Williams on the United States Supreme Bench.

to the public mind and would ferment there, and that however innocently gentlemen might vote upon the arguments then furnished upon a measure such as that, taking some ten millions of dollars out of your treasury and bestowing it upon a private corporation, those gentlemen would go home, I thought, with the mark of Cain upon their brows, and that these halls, which then knew them, would know them no more forever. How near is that prophecy to its fulfillment in what we see here now! If I had expected it to be otherwise, I should not have thought of being here myself."

He then goes on to show that these bills are designed to show fraud in contract, if the railway interests made the contract claim regarding the commutation and other bills of the series, which were designed to create the Pennsylvania Railroad system, or "merger," as it was then called. The test vote on postponement, taken on January 21st, showed vividly what a change there was, namely, 71 in Messrs. Williams' and Hopkins' party to 24 in the railway party, whose chief spokesman in this House was Mr. Dennis. Between Mr. Dennis, who was a Philadelphia lawyer, and Mr. Williams there were some of the most interesting tilts of the session. "I am certain, Mr. Speaker, of one thing," said the former on this occasion, "that no gentleman on this floor can listen with more pleasure or unmixed admiration to anything that falls from the lips of the gentleman from Allegheny, [Mr. Williams] than myself. The only fault which I have to find with him at any time is, first, that he has an exceedingly winning and senatorial way, by the nod of his head, of seeming to carry a question at once; and in the second place, I think his logic is at times—very rarely—a little faulty."² The investigation and the repeal of the commutation bill were the great points at issue. It is not possible in limited space to follow the complicated fight that was made. Mr. Williams' own opinion of the importance of the investigation was that "it is one of gigantic interest; it dwarfs into nothingness any other

¹ *Legislative Record*, 1862, p. 54. Farther on he says he excepted Philadelphia representatives.

² *Legislative Record*, 1862, p. 60. In a reply to this speech Mr. Williams stated that he had never been a practitioner in criminal courts—"always declined that sort of business." P. 112.

that has ever commanded the attention of this Legislature. If we do no more than lift up the curtain and expose to the public eye the means by which this great iniquity was consummated, I take it we shall render to the people of this Commonwealth the best service that has ever been rendered by any Legislature. With the cloud of war now over and around us, the people seem to have no wishes beyond the salvation of the country, the protection of the great general interests of the republic, outside of the particular subject of inquiry which now engages the attention of this House." He described the railway "monopoly" as a "colossus that bestrides this Commonwealth with one foot on the Ohio and the other on the Atlantic seaboard." He told in a speech teeming with beauty and forcefulness of illustration of how Charles V tried to make a number of watches run together and failed, even as he had failed to make men think alike in religion; but, at the last session, "the Pennsylvania railroad company was able to achieve a miracle greater than that! It could make sixty men think alike upon every line, every syllable and every letter of that bill, and no man here, even with the wisdom of Solomon and the eloquence of Cicero, could have effected an alteration even in the crossing of a t or the dotting of an i. This looked miraculous. It was a miracle—very short of a miracle."¹

The investigation went on with all but unanimous consent of the House.² It showed great corruption. The main effort, however, was to get President Scott of the Pennsylvania Railroad on the stand, but Senator McClure told Mr. Hopkins privately that the investigation should not touch two or three men, one of whom was Scott, who was in charge of the government's transportation, and the way that McClure kept his word is an interesting tale. Mr. Williams had secured the order of the House to go and get Mr. Scott. The officer sent was "seen" by the Republican leader in the Senate, and with the result that

¹ On p. 525 he plainly says that were it not for the tonnage tax restoration he would not have been in the House, and "when it is disposed of I shall consider my work done."

² *Legislative Record*, 1862, p. 135. Mr. Dennis was the only one voting in the negative to 92 for the Hopkins resolution.

he would always, after an interview in which Mr. Scott was kept fully informed of the situation, return announcing his inability to "find" Mr. Scott. After a few experiences of this kind Mr. Williams' suspicions were aroused, and he determined to have a new officer and go with him himself. Senator McClure, hearing of this, sent a sealed letter by messenger to the Willard Hotel, Washington, and then telegraphed Senator David Wilmot to go there and get the letter. It informed the latter gentleman that Mr. Scott must be got out of the way, as Williams was after him in person; that he must lay the matter before President Lincoln and effect it in some way, as Scott's services were too vital to the Union cause now to be interrupted. Senator Wilmot called at the White House; Mr. Lincoln called in Secretary Stanton and showed him the letter, asking him what should be done. The Secretary promptly stated to the President that he had just ordered Mr. Scott to Kentucky to give much needed aid in the transportation service there and that he would be gone several months. "And," said Colonel McClure in recounting the incident, "Stanton forthwith ordered Scott to start, and that night, while Williams was asleep, Scott's train was standing on a siding at Harrisburg and I was having an interview with him. The next morning, when Mr. Williams started for Washington, Scott's train was passing out of the western edge of the State for Kentucky!"¹

On March 14th the bill restoring the tonnage tax was passed in the House by a vote of 70 to 25.² In the Senate the territory which had sent Senators to restore the tonnage tax had a comfortable majority, "mathematically speaking," as Senator McClure had told Mr. Clymer. "Many of these Senators, however," said

¹ From an interview by the author with Colonel A. K. McClure in Philadelphia in 1904, with permission to use.

² *Legislative Record*, 1862, p. 558. These are such fine debates along here that it is unfortunate that space will not permit reproduction. A letter of Mr. Williams of February 15, 1862, says: "I have just achieved a great triumph in effecting the Repeal of the Tonnage Tax infamy of last Session—so far as the House is concerned, by a vote of 72 to 28. Of this lean minority no less than 17 are Philadelphia members, leaving only 11 outside of that city & two of these salaried attorneys of the Company." This was undoubtedly a slip in the name of the month, which should be *March*. His totals also conflict with those of the *Legislative Record*, but he may have included absentees whose sentiments were known to him. The letter shows him to have been on a joint Pennsylvania-New Jersey Commission on defenses of the Delaware.

Colonel McClure in describing the event, "did not *personally* believe that the tax should be restored." He knew who these gentlemen were and forthwith called them to a secret caucus one night, and told them that he knew they did not believe that the tax should be again put on the Pennsylvania Railroad, but that, if they would stand by him, he would construct a substitute bill for which they could vote and satisfy their constituents but which would sustain a defeat at the hands of the House itself. They agreed. His bill proposed to restore it to the Pennsylvania, but also to put a tax on other roads, a measure that would raise an opposition in the House fatal to the bill from the constituency of those roads. It worked, and thereupon the great fight of the session was over. The railway measures were shrewdly won even against "mathematical" majorities in both Houses!¹ The tonnage tax, which was the railway's indemnity to the State for the depreciation of her canal system, or "public works," and, in a sense, the compensation for keeping the Baltimore and Ohio road out of the State, was surrendered by the State to the new railway system.²

It is unfortunate that his various legal arguments in the entire debate cannot be given. They show high lawyer-like treatment of the subject and evince a temper thoroughly conciliatory and without malice. "I can assure all who hear me that I have no quarrel with Philadelphia. I greatly admire her," said he, and added, "but, sir, there is no question of that kind here." His eye was not on places or persons, but on the just operation of great general laws—his was, as he believed, the statesman's purview. He beheld the looming shadow of the modern giant—corporate power—and was trying to find and keep it in its legitimate sphere, as many another statesman has been doing ever since and shall

¹ Interview by the author with Colonel A. K. McClure in 1904, with permission to use. See the Senate substitute bill in *Legislative Record*, 1862, p. 987. When the bill was returned to the House Mr. Williams said: "Now, I am responsible to some extent for the paternity of the original measure which passed this house by a large majority, but I disclaim any responsibility for the beggar's brat, the miserable foundling, that has been thrust into the cradle of the rightful heir. Sir, the purpose was not to amend, but to destroy by indirection." And, of course, he stated the fact. The House refused to pass the bill, by a vote of 67 to 24, on the single speech of Mr. Williams.

² In a speech on p. 552, *Legislative Record*, 1862, Mr. Williams gives an excellent *résumé* of the history of the whole question.

continue to do until the political and legal province of corporate power is as fully defined as are individual or municipal and State powers. His viewpoint was peculiarly judicial; this was recognized by his fellow-members in his assignment to the judiciary (general) committee. If he used powerful rhetorical weapons, they were wielded upon the basis of legal argument, and it was because this was intuitively and almost universally recognized among those who disagreed with him that he won their admiration, if not affection, even while dealing his doughtiest blows. There were many genial descriptive names given him, "Old Man Eloquent," "the Walking Library," and the like.¹ One of his colleagues referred to him as "the engineer in the cause of honesty," and even the brilliant Dennis confessed that "My friend from Allegheny and myself, whatever may have been our seeming contentions and disputes, have cherished towards each other all this session a love that was not excelled by the love of David and Jonathan."² So when the session closed on April 11, 1862, the House, this time by motion, requested him to make its farewell address.

He spoke of the inactivity of the army in the past year and the wisdom of the choice of Stanton as the head of the War Department in eloquent periods.

"It was my fortune to know, and know well, the man whom he [the President] had thus selected. He was a lawyer and no politician, in the ordinary sense of the term. He had not sought or intrigued for the position. A lawyer myself and no politician either, I had practiced in the same courts with him for many years. I knew that he was able, active, patriotic, correct and bold—that he was endowed with high intellectual powers, and a herculean energy, which was a guaranty that things must *move*. I thought I understood his opinions, and that he was the man above all others whom Providence had indicated for the place at the crisis. I hurried to Washington for the purpose of seeing him. I portrayed in language as strong as I could utter the calamitous condition of the country. I insisted that we were losing caste among the nations—that the very unmolested presence of a rebel army beyond the Potomac and in view of our very capital, was a standing menace which

¹ *Legislative Record, 1862, p. 933.*

² *Ibid., 950.*

was worse than a dozen defeats—that no government could safely stop to inquire whether it was strong enough to put down a rebellion—that it were better for us to lose a battle or even an army, than to endure this reproach and humiliation; that we could not afford to stand this throughout the winter, and that our armies *must move*, and the Republic at once fight its way back to the high position which it had lost, without regard either to rough weather or hesitating generals. His answer was: I realize fully the force of all you say. I agree with you that the army must move. If my counsel can avail, it must and shall move—and it *did* move—and now behold! The telegraphic wires flash upon us from day to day almost with the rapidity of minute guns, the announcement of victories on victories, multiplied and multiplying, that our memory fails to rehearse the catalogue.”

“The time is not distant,” says another gem of that eloquent farewell,—“I see it with the eye of faith—when our glorious eagle, the proud emblem of our nationality, which stoops over your head, shall be seen perching over the blackened battlements of every fortress that treason has rent from our hands, and when the stars and stripes shall float again from ocean to ocean over every State of this now apparently dismembered Union.”¹

A company of young people were spending an evening at his home about a year later, and some one present, having a copy of the Confederate song, “The Bonny Blue Flag That Bears a Single Star,” one of his daughters led in trying it. Mr. Williams, in his study heard it, and, roused by its sentiments, dashed off the following, suggesting to the young people that these were fitter sentiments for them to sing. The song soon found its way into the press and the army and finally in a “Moore’s National Songs:”

“HURRAH FOR THE UNION FLAG!”

“Brothers of free descent are we, and native to the soil,
Knit soul to soul, in one great whole, fruit of our Fathers’ toil;
But when that bond of love was rent, the cry rose near and far,
To arms! To arms! Long live the stripes! We know no
‘single star.’

¹ *Legislative Record*, 1862, pp. 1030-1.

CHORUS.

"Hurrah! Hurrah for the Union Flag, Hurrah!
Hurrah for the Union Flag, that knows no 'single star.'

"So long as Southern arrogance forbore to touch that flag,
Full many a taunt we meekly bore, and many an idle brag;
But when on Sumter's battlements, the traitors did it mar,
We flung abroad the Union Flag, that ne'er shall lose a star.

"Hurrah! Hurrah," etc.

"And first the gallant Keystone State, from every mountain glen,
From hill and valley, lake and town, sent down her stalwart
men;
And all New England rose amain, as blew the trump of war,
And raised on high their Fathers' Flag that knows no 'single
star.'

"Hurrah! Hurrah," etc.

"From Saratoga's ten-crowned heights, from Monmouth's bloody
plain,
The men of York and Jersey too, both swelled the mustering
train;
As onward—onward—fierce it rush'd o'er all opposing bars,
To punish those who dared insult our glorious stripes and stars.

"Hurrah! Hurrah," etc.

"Missouri, too, her garments red, and little Delaware,
With heart as big as when of old she bore a lion's share,
Have burst the chain, which cramps the soul, and all that's noble
mars,
And wheeled in line, come weal or woe, beneath the stripes and
stars.

"Hurrah! Hurrah," etc.

"And 'Maryland, *our* Maryland,' though called with 'fife and
drum,'
And 'old-line bugle' too, to fight 'gainst the 'Northern scum,'
Has thought of Camden's bloody field, and Eutaw's iron scars,
And lo! she stands, where erst she stood, beneath the stripes
and stars.

"Hurrah! Hurrah," etc.

"Would we could say the same of thee, thou dark and bloody ground!

Whose sexless sages, false of heart, a way of *peace* have found!
Shame on you! No half faith would we! Up, gird ye for the wars,

And take your place as *men* once more, beneath the stripes and stars.

"Hurrah! Hurrah," etc.

"From thy Medusa glance we turn, with hearts of cheer and pride,

To West Virginia, virgin rib, torn from false mother's side.
Daughter of strife! Fair Freedom's child! Thy mountains ring afar,

With echoing shouts, for that blest Flag, that counts another star.

"Hurrah! Hurrah," etc.

"And next the hardy pioneers, the dauntless and the brave,
From those domains by Freedom won, that never knew a slave,
Their trusty rifles all in hand, with eye and port like Mars,
Grasped once again with iron hand, the staff that bears our stars.

"Hurrah! Hurrah," etc.

"And from the bison's prairie haunts, o'er Mississippi's flood,
From Minnehaha's sparkling Falls, from Kansas' land of blood,
New England's youngest scions there, have heard the din of wars,

And grasped their Fathers' ancient brand, and rear'd their stripes and stars.

"Hurrah! Hurrah," etc.

"And farther still, where sunset seas, bathe California's shore,
And grim Sierras darkly frown its golden treasures o'er,
Our Western Twins have heard the call, and answered from afar,

We come! We come! Rear high the Flag, that knows no single star.

"Hurrah! Hurrah," etc.

"And more 'twill count, no Pleiad lost, of all that shining host,
Though dim eclipse have veiled their fires, and traitors loudly
boast;

But one by one those wand'ring lights shall gem our heavens,
like Mars,

And all the nations bless our stripes and coronet of stars.

"Hurrah! Hurrah," etc.

"No other flag shall ever float above our homes or graves,
Save yonder blazing oriflamme, that flutters o'er our braves;
It's rainbow stripes, our Northern lights—with no sinister bars;
Our ancient flag! Our Fathers' flag! Our glorious stripes and
stars!

"Hurrah! Hurrah," etc.

"Then bear that banner proudly up, young warriors of our land,
With hearts of love, and arms of faith, and more than iron
hand!

Down with the Northern renegade! and join our gallant tars,
In rearing high, in victory, our deathless stripes and stars!

"Hurrah! Hurrah for the Union Flag, Hurrah!
Hurrah for the Union Flag, that knows no 'single star.' "



THE NATIONAL CAPITOL AFTER COMPLETION OF THE NEW WINGS AND DOME

Half-tone of a contemporary engraving by John Sartain, from artist's proof in the Congressional Library

CHAPTER XVI

HIS ELECTION TO THE THIRTY-EIGHTH CONGRESS

"THE SUMNER OF THE LOWER HOUSE"

HIS NOTABLE EULOGY ON PRESIDENT LINCOLN

1862

In the autumn elections of that year, 1862, in keeping with the new, aggressive spirit represented by the appointment of Stanton as head of the War Department, the constituents of Mr. Williams determined that his good work in the Legislature should be recognized and that another aggressive force should be contributed to the Lower House of Congress at least, since the Legislature had not sent him to the Senate.¹ The Thirty-eighth Congress met for organization a year later, namely, on the 7th of December, 1863.² There upon the floor he found his old-time anti-Mason antagonist, the venerable though none the less fiery Thaddeus Stevens, then seventy years

¹ His was the Butler-Armstrong district. Moorehead was retained for Pittsburgh. A confidential letter from Stanton at this time throws light on the feeling in some quarters on the Curtin controversy. It was dated October 31, 1862, and reads as follows: "Governor Curtin is acting very strangely in regard to the draft & the Government generally.—I wish you would go to Harrisburgh and look into things & come on here. It is said he expects to be elected to the Senate by the Anti-War Republicans & Democrats. They would pay that price to prevent the Government from getting troops in Pennsylvania. It behooves loyal men to be vigilant and active. Yours Truly, Edwin M. Stanton." Williams papers. A letter from Simon Cameron of July 28, 1863, from Harrisburg is very positive and emphatic in the same vein. A Stanton letter of March 13, 1863, shows the darkness and gloom of that period also.

² A letter of Williams', dated that day, says: "On my arrival I was called on at once to attend a caucus at the Capitol. We sat till nearly 12 o'clock discussing the possibilities of a disturbance in the organization through the treachery of Emerson Etheridge, the Tennessee clerk of the last House. From the facts stated by a dozen members it seemed obvious that the scoundrel was seriously meditating to throw the organization into the hands of the Copperheads, by refusing to put the names of the members from the strong Republican States in the Roll, for an alleged want of verbal accuracy in the returns. It was equally obvious, however, that any attempt at Revolution like this would probably cost him his life, before he left the hall, & he has been since waited on by some of the Western members & personally warned that such an attempt on his part would be fatal to himself."

old. Williams, who was fifty-six years old, came in with what might be called the next generation, with such men as Lovejoy, then fifty-one years old; Morrill, fifty-two; Boutwell, forty-four; Dawes, forty-six; E. B. Washburne, also forty-six; and the now venerable Judge M. Russell Thayer of Philadelphia, then forty-three. Among the younger men were Blaine, at thirty-two; Randall at thirty-four; Garfield at thirty-one; "Sunset" Cox at twenty-eight; the now venerable Allison at thirty-three; and Windom at thirty-five, while the Speaker, Colfax, ranged on the borderland between at thirty-nine. The aggressive war party were in the ascendant and the great key-victories in July at Gettysburg and Vicksburg brought forth the first real visions of final success. The awfulness of the tragedy appalled the timid, but the government and the dominant party proposed more troops and even greater vigor to bring the mighty contest more quickly and certainly to a close. Consequently the whole question of preparation for reconstruction—which had even been foreshadowed in Cameron's and Stanton's desire to have Mr. Williams not only draft a law for courts over conquered territory but to have him a presiding judge in those courts—was precipitated upon Congress. Mr. Williams found the aged radical, Stevens, the acknowledged leader in the House—the man whom since his first entry into politics some thirty years before he had either refused to join or, if he did, only with discriminating qualification. "Williams a radical!" exclaimed his now venerable and beloved colleague, Judge M. Russell Thayer, in a recent conversation, in which the author raised the question. "In the same class with such men as Stevens! No, indeed, he was no radical, if that is the conception of the term. Williams was pre-eminently judicial."¹ This estimate is confirmed by his assignment to the committee on judiciary, along with James F. Wilson of Iowa (chairman), George S. Boutwell of Massachusetts, Francis Kernan of New York, Francis Thomas of Maryland (Williams' name is next in order), Austin

¹ From a conversation with Judge Thayer, had by the author at his home in Philadelphia, in the spring of 1904, with permission to use such as would answer the purposes of this work. Only the Judge's advanced years prevented him from reducing the substance of his conversation to writing.

THE UNIVERSITY OF CHICAGO



THE UNIVERSITY OF CHICAGO



THE THIRTY-EIGHTH CONGRESS

Half-tone of a contemporary photograph by Brady in possession of the Misses Williams,
Philadelphia

A. King of Missouri, Frederick E. Woodbridge of Vermont, Daniel Morris of New York and George Bliss of Ohio.¹ And yet Mr. Williams believed there was a time and place for radical action, and after about two months of careful study of the situation he began his congressional career by supporting some measures, at least, that at that time were classed as "radical." His grounds for it, however, were, as shall be seen, thoroughly judicial in scope and spirit.

On February 3d (1864), when Congress was in committee of the whole on the state of the Union, and was discussing the enrollment act, he expressed himself on conditions at that time.²

"Mr. Chairman," said he, "if this had been a new question, I should have felt greatly embarrassed as to the policy or propriety of commuting military service for money. This is a war measure, and not a revenue measure. The Government wants men and not money. The latter has been furnished by the people with unstinted and ungrudging liberality; nay, with a prodigality which has surprised ourselves, and at which the world stands amazed. I do not know how to value the stout heart or the strong arm of the American freeman in the current money of the merchant. I do not like the traffic in men and muscle and sinew, whether it be white or black. Looking to the experience of other republics, I should greatly deprecate the conversion of the soldier of ours into a mercenary. Between men of American growth and training, and the richest of the metals, I know no common standard of comparison. With me they are quantities incommensurable. When the Republic demands the services of her children, I know no answer they can make, except that of Isaac, that they are ready for the sacrifice. It is the answer which their uncalculating instincts prompted when the echoes of the guns in Charleston harbor thrilled along their nerves, and half a million of them sprang to their arms at the first summons of the President to avenge the insult to our flag; when the very yearnings of maternity were hushed, and the American, like the Spartan mother, arrayed her youngest born as though it had been for the bridal, put the musket in his hands, and sent him out with the invocation of God's blessing upon his errand, and the injunction to do his duty and come back upon his shield, if such

¹ On the 22d of January, 1864, Mr. Williams was also placed on the committee on uniform system of coinage, weights and measures. *Congressional Globe*, Thirty-eighth Congress, 1st Session, Part 1, p. 310.

² *Congressional Globe*, Thirty-eighth Congress, 1st Session, Part 1, p. 475.

were the fortunes of war, but not without it. It is the answer which they would still make, if their ardor were not chilled by the fatal and inglorious inaction, the wearisome delays, the inadequate results, and the want of earnestness, which have distinguished so many of our commanders; or, what is worse still, if their love of country was not overlaid and smothered by the devilish suggestion of wicked counsellors, who have squatted at their ears, and distilled into them the subtle venom of party.

"They have ceased, however, to make that answer. Enthusiasm was too weak to survive rebuffs and disappointments, while treason at home was but too ready to make them the occasion for denunciations against the Government and questions as to the rightfulness and the successful results of the war. It has become, of course, a necessity to remind the backward of their duty, and to insist that it shall be performed. These arguments have prevailed, however, with many of the people who had been accustomed to take counsel from the malecontents. They have held back, accordingly, until it has become indispensable to awaken them to a sense of the obligations which they owe to their country. Their advisers do not, however, deny the duty; so far as lip-service is concerned, there is an abundance of it. But they insist that the performance shall be a voluntary one, or, in other words, that it shall rest in their own discretion. Like Falstaff, they would do nothing on compulsion. To compel a Democrat to fight would be anti-republican, or if there is to be compulsion, it must be, upon the authority of a great casuist of the Romish Church, who has not read Bellarmine in vain, and knows how to turn a corner as adroitly as the original and inimitable Jack himself, a voluntary one, a sort of compulsion in the Pickwickian sense. To compel him in any other way would be a violation of his prerogative as a freeman. A perfect liberty is the right of doing what we please, but never anything on compulsion.

"And now a word or two in sober earnest on the objection taken seriously here, and urged throughout the country, in relation to the legitimacy of the draft. I need not apologize for speaking on that point. It is always important to satisfy the people not only that a thing is law, but that it is right. It is always well to add the sanctions of conscience and the sense of duty to the mandates of the lawgiver. Without this, laws are practically impotent. The '*sic volo, sic jubeo, stat pro ratione voluntas*' of an imperial rescript is not the argument for an American citizen. He wants more than this, and he wants it here because immense pains have been taken to cloud his perceptions and pervert his moral sense by representing the

compulsory performance of the highest of his duties as a violation of his liberties. The oracles of the Opposition have proclaimed—their highest legal authorities in Pennsylvania, in the exercise of a jurisdiction heretofore unknown, have decided—that the act of the last session was unconstitutional. Men equally trusted by them here have insisted that its principle was anti-republican. It is important, therefore, to inquire whether these things are so—whether there is anything here to authorize these imputations or to excuse even a reluctant submission to a measure which is essential to the safety of the nation and has been made necessary by the counsels of the very men who now complain of it.

"I do not propose to enter into objections of detail arising out of the peculiar features of the law or to argue the question upon merely technical or professional grounds. These are for the courts. This is a higher forum, and the objection made to the principle—radical as it is—an appeal from the lawyer to the publicist, from the courts to the people. It is the statesman who must decide it, and not the judge.

"Is it true, then, that a compulsory levy of troops—a conscription, if you please—in the extremity of a State is anti-republican in principle, or in other words, at war with the spirit of our institutions and the genius and character of this Government? It has been so announced on this floor, on authority supposed to be conclusive, and has gone to the country without contradiction. It was a challenge of the law from a higher point than the Constitution. It was not the assertion in terms that the law was at variance with the Constitution, but in effect that the Constitution itself was not republican, and did not conform to the fundamental idea on which it rested. It was the proclamation of a higher law which the authority "to raise and support armies" had impinged upon.

"Well, I am no higher-law man, except so far as the consideration of the public safety or the nation's life may make me so. I am not ashamed or afraid to recognize thus publicly the maxim of the *salus populi suprema lex*. It was a provision of consummate wisdom in the constitution of republican Rome, and one which in the judgment of one of the acutest and profoundest statesmen of any age was the source of all its grandeur as well as the guarantee of its stability, which created a dictatorship for times of great public peril, for the reason that such a power must be invoked in the extremities to which every State is subject, and that where it is wanting it becomes necessary to violate the constitution—which is always of bad example—in order to the salvation of the State.

"For the sake of greater clearness, I quote the passage itself, translated by me from the French version in default of an English one, of the 'Treatise on the Republic,' by Machiavelli:

"This part of the constitution of Rome deserves to be remarked, and ranked in the number of those which contributed the most to the greatness of its empire. Without an institution of this nature, a State cannot escape but with great difficulty from extraordinary convulsions.'

* * * * *

"It follows from this that all republics must have in their constitutions a like establishment. When it is wanting it becomes necessary, by pursuing the ordinary track, to see the constitution perish, or rather to depart from it for the purpose of saving it. But in a State well constituted no event must happen for which there shall be occasion to resort to extraordinary ways; for if extraordinary means do good for the moment, their example constitutes a real evil. The habit of violating the constitution to do good afterwards authorizes its violation to color evil. A Republic, therefore, is never perfect if its laws have not provided for everything, held the remedy always in readiness, and furnished the means of employing it. And I conclude by saying that republics which in imminent dangers have no recourse either to a dictator or to like magistrates must inevitably perish therein.'

"The war power of our Constitution is the equivalent of the Roman dictatorship. It is, however, here as well as there, the extreme medicine of the Constitution, and not its daily bread. The mission of a republic is peace; war is a state of violence. To conduct an army upon the principles of republican equality would be fatal to all subordination and discipline. For such an exigency as this, the normal condition of a republic will not serve. Its very organization would forbid it. War is anti-republican in its effects, and can only be successfully waged on anti-republican principles. While it prevails the law itself must almost necessarily be silent. Its code of laws is necessarily anti-republican. With such a Government, therefore, it is an unnatural condition, and the thirst for territorial aggrandizement through the agency of the sword does violence to its nature and its life. But while wars of conquest are anti-republican, a war of self-defense to preserve the nation's life is a legitimate because it is a necessary one. The doctrine of non-resistance would be fatal to any Government. When there is no mode left of supporting the Constitution, except by suspending the enjoyment of an individual right, that right must yield to the occasion. It is not the Constitution that authorizes the suspension of the *habeas corpus*. Recognizing, as its framers

did, the necessity of putting the highest privilege of the citizen in abeyance, they do not *grant* but only *qualify* or abridge its exercises, by providing that it shall not be suspended *except* in the cases indicated. Every attribute of sovereignty which pertains to any Government that is supreme may be exercised when necessary, unless it is expressly forbidden. Thus the right of *eminent domain*, as it is called by the publicists, or that which authorizes the seizure or destruction of private property for public uses, and the kindred power of taxation which seizes it without other equivalent than the protection which the Government affords, are not the subjects of special *grant*, but only of special *limitation*. Establish a government that is independent and sovereign, and they belong to it of course because they are essential attributes, inseparable from its very being. If a Government can, however, take private property, which is the mere product of labor, without compensation, for a public use, it is but a step further, and an easy one, to take the producer himself, as it does when it compels him to work on the highway on the ground of public necessity.

"It is not disputed, as I understand, by anybody here, that the Government is entitled to the military services of all its citizens when they are needed for its defense. The objection is only that a compulsory levy is *anti-republican*. If this be true, then the idea of such a thing as a republican Government is the wildest of chimeras. Admitting the duty, the right to enforce it is a corollary, a necessary consequence, in this case as in all others. The notion of any Government at all presupposes supremacy, subordination, and constraint. No Government ever did or ever can rest upon the mere voluntary principle. All the duties of the citizen, except those merely moral ones that are said to be of imperfect obligation—all that are political at least—rest upon the idea of coercion. That is the principle of every law. That is the import of the whole judicial machinery with which we are surrounded. The *posse comitatus* itself is nothing more nor less than a compulsory levy, an army improvised to execute the laws. When the time arrives—which will not be until the millenium foreshadowed by the prophets, and several years after the modern Democracy shall have died out like the extinct monsters of the earlier geological epochs—when men shall perform their duties voluntarily, there will be no further occasion for either Government or laws. The notion that the mob of New York, and the unnatural sympathizers with the rebellion everywhere, shall not be *compelled* to defend the Government that protects them in all their rights and endows them with the unwonted privilege of governing other people, is but the extension of the argument of the late Attorney General

of the United States, and now reporter of its Supreme Court, that there could be no coercion of States, and that this great Government was without even the power of self-defense, was helpless against the parricide, and must uncover its bosom or wrap its robes around it and submit to death without a struggle whenever the murderous blow was aimed by the hands of its own children. That was according to programme. Both have the same purpose and meaning. That would have crowned the work of the traitors with immediate success. This is a slower poison, which would leave the defense of the nation to the loyal Unionists in the field, and transfer the direction of the Government to the hands of the auxiliaries of the rebellion, who choose 'to kiss my lady peace at home;' who know that they can serve the cause they love, with more effect and greater safety here by affecting loyalty, misrepresenting the designs of the Government, discouraging volunteering, and denouncing compulsory levies of men, than by taking their places openly in the armies of the confederacy. I do not know a man of them who is not now an 'unconditional Unionist' *provided* he can have 'the Union as it was,' which he knows to be impossible, whether we succeed or fail, or *treat* as he desires us to do, and hopes to bring about by cherishing the disease, preserving the cause of the disunion, and declining to employ the most necessary and effective weapon which Providence has placed in our hands for compelling the eventual restoration of the Union itself. Thank God! the instincts of the people, the loyal army at home, have revolted at the special plea of the attorney, and even converted him at the late elections into the noisiest of patriots and the professed advocate of the vigorous prosecution of the war; that is to say on peace principles, and provided you will refuse to *allow* the willing negro or *compel* the reluctant and recalcitrant Democrat to fight. The fear is, in view of the well-known Army sentiment, that it would change the very nature of the latter by showing him the realities of war and making him a radical, or, in other words, an earnest man.

"We have the authority of one of the apostles of the new Democracy now holding a seat on this floor, if the newspapers have not misrepresented him, for the opinion publicly expressed in the great peace convention at New York, that a war Democrat is an impossible thing; and that any man who would draw a sword here in such a quarrel—I mean on this side of it—is no better than a Black Republican. And so it is that, while all the Democracy of Butler and Burnside and Hooker and other fighting generals of that stamp, who have proved that they were in earnest, has failed to shelter them from the denunciations of

the rebel papers in Richmond and New York, the non-combatant qualities of the grave-digger of the Chickahominy and the loiterer at Bull Run have made him the idol of the Democracy in both those capitals. If the gentleman from Kentucky, who was taxed a few days ago by his colleagues, with infidelity to his pledges to vote for a war Democrat, had adverted to the sentiment to which I have just referred, he might have answered that a war Democrat was a myth—a person even more apocryphal than Prester John or the man with the iron mask.

"If it be true, however, that a compulsory levy of men for the protection of the Government or the enforcement of its laws is anti-republican, then I say again that republican government is just as impossible a thing as a war Democrat. The nation which cannot command the military services of its people has no guarantee of life, and must inevitably perish in its first formidable convulsion. To presume that they will all rush to its standard at the first summons, and that they will adhere to it alike through good and ill fortune, alike through sunshine and through storm, is to suppose in the face of our present experience that it contains no bold traitors who will lift their hands against it in battle, no cowardly miscreants who, with professions of loyalty on their lips, will adopt the safe policy of skulking from its defense, or aiding and encouraging those who are endeavoring to overthrow it. The time was when this service was a privilege of rank or fortune; when the soldier served without wages, although he derives his name from the idea of pay, and when the craven who refused to respond to the summons of his country was visited with the dire anathema which is so well paraphrased by the genius of the immortal Scott, and finds its climacteric in the imprecation 'Woe to the traitor, woe!' A greater than he has remarked that 'the age of chivalry is gone, and the age of sophisters and economists has succeeded.' It was not so at the commencement of this rebellion.

"I happened to be at the seat of government of Pennsylvania when the news of the bombardment of Sumter came over the electric wires, and shook its capitol as with an earthquake throe, and then sped on its fiery errand along the Susquehanna and the Delaware and the limpid Allegheny, until it reached the distant shore of the great lake which bathes her north-western confines. The fiery cross that passed from hand to hand and gathered the clansmen of the hill around the banner of their chief never so traveled, never lighted such a conflagration as was kindled by that message. Before the setting of another sun a hundred thousand Pennsylvania men were begging for the privilege of laying down their lives in the defense of

the insulted flag of their fathers. The political managers of the Democratic party who had bargained against coercion and pledged themselves that Pennsylvania would take sides with the rebellious States were appalled by the demonstration, and slunk away from the public gaze which would have blasted them. It was only when reverses overtook our arms—reverses which were the consequence of the unsuccessful effort to propitiate themselves by taking counsel with and employing men of the same type of thought—that they ventured to reappear, and managed to seduce the loyal men of the Democratic party into the belief that a Republican Administration was unfit to conduct the war, which they reinforced by the argument that it was obliged to borrow its generals almost exclusively from the Democratic party. If a draft was made necessary after such a demonstration it was through their agency. If it has proved ineffective or unpopular it is because they have endeavored to make it so.

“The country knows how the question was dealt with by the Democratic authorities of New York. It knows, too, the process by which the Democratic judges of the supreme court of Pennsylvania undertook, with indecent precipitancy, and in the exercise of a jurisdiction entirely new, to restrain the execution of the law which authorized it. And we are reminded here from day to day that there are men among us who apparently do not intend that the country shall find soldiers, either white or black, if they can prevent it; who insist that we shall not enlist the negro because it is a privilege which belongs only to the white man; who say to the white man that he ought not to volunteer because it is an abolition war; and that the conscription is unlawful and unnecessary because we ought to depend on volunteers; and who, after doing everything in their power to render the law ineffective, come here and, with a coolness that would be absolutely refreshing if the times were not so much out of joint, demand its repeal on the ground that they have succeeded! I have heard it stated that the district of the gentleman from New York who is most importunate on this point has yielded—under his patriotic auspices, no doubt—about three hundred and fifty soldiers, leaving his voters, of course, most comfortably intact, and in a condition to govern the nation at least, if they will not fight for it. If he favors the war, however, as he says he does, why does he not endeavor to amend the law? If the commutation clause is the difficulty with his constituents, and he thinks that a poor man can pay \$1,000 for a substitute more easily than he can pay \$300, why does he not move to strike it out?

"I fear it cannot be made to suit gentlemen of that cast of mind and heart unless it can be so framed as to defeat the object entirely. Their constitutional scruples will not allow them to do anything for the salvation of this nation. They have found no difficulty heretofore in discovering in that instrument every power that was required to further the interests of the divine institution. They had no difficulty in regard to the Louisiana or Florida purchases; none as to the annexation of Texas; none as to the assumption of its debts; none as to the purchase or seizure, at the expense of another war like the Mexican if necessary, of the gem of the Antilles. When the attempt is made, however, to extract anything valuable from that instrument for the interests of humanity or the preservation of the nation's life, it is no better than a *caput mortuum*—without vitality, full of obstructions, impotent for good, but alive all over, in all its members, and actively omnipotent, too, for mischief. These constitutional expounders who strain at a gnat make no account of taking in a camel at a breakfast. I should despair of making anything out of them by a constitutional argument."

After this vigorous opening he took active part in the debates and on March 14th precipitated the readmission problem by offering resolutions on that subject.¹ It was not until April 28th, however, that he fully expressed himself on the subject of the restoration of the Union, in a speech that attracted widespread attention and was his great speech of the session. It shows him seeking the structural and strategical truth of the situation and is worthy the interest it aroused.²

"Mr. Speaker," he began, "I have some thoughts on the state of the Union, and the process of bringing back to our system the wandering stars which have shot so madly from their orbits, that I would have desired to ventilate on the occasion of

¹ "The Struggle Between President Johnson and Congress Over Reconstruction," by Charles Ernest Chadsey, Ph. D., Columbia University Studies, Vol. 8, No. 1, p. 19. Also *Congressional Globe* of that date.

² About this time some of his opponents in his own district attempted to get Josiah Copley of Allegheny City to stand for Congress in his place. Mr. Copley, in a letter of April 18th (1864), refused, saying among other things, that Mr. Williams "is, as you well know, a man of brilliant and highly cultivated talents and unimpeachable integrity" and that they would deprive their district of the honor of the great services they might reasonably expect from him. He reminded them how they had kept, during the existence of the old district, Mr. Covode in office for four successive terms in which his great service had won him and them great honor.

This speech appears at p. 1974, of the *Congressional Globe*, Thirty-eighth Congress, 1st Session, Part 3.

the discussion here of the resolution for the amendment of the joint resolution of July, 1862, in relation to the extent of the forfeiture for treason against the Government. I was not so fortunate as to agree with a majority of my colleagues on the Judiciary Committee, either as to the meaning of the Constitution or the curative virtues of the amendment. I would have preferred to vote for the absolute repeal of that disabling feature, on grounds outside of the constitutional provision in regard to cases of judicial attainder, and upon considerations looking to the final settlement of the great internecine struggle which has cast us loose from our ordinary moorings, and suggested so many new and dark problems of State for our solution. I thought the question of the times was involved in that discussion, as it widened, and deepened, and swept within its current—and that too by an inevitable and inexorable logic—the great considerations of the status of the rebel States, and the means whereby the broken column and the crumbling arch were to be restored, and the fragments of the shattered urn gathered up and re-united, so as to give back, if possible, its original strength along with its original perfume. It struck me that these were questions which must be first settled before we could legislate understandingly or safely upon almost any others. They were not to be postponed or evaded. We could escape or ignore them by burying our heads in the sand like the ostrich. They met us on the very threshold at the organization of this House. They have confronted us from day to day, at every turn, in the reports of committees, where sound conclusions have been sometimes reached—by a very indifferent logic, of course—from unsound premises, and erroneous conclusions sustained here, almost without discussion, in apparent unconsciousness of the dangers with which they were pregnant. It seemed to me that we were at sea, drifting without rudder or compass at the mercy of the winds and currents. I wished a reckoning of our position. I desired some landmarks—some safe anchorage to which we might grapple—some common center, at least, about which we might gravitate in orbits 'centric or eccentric,' as our several idiosyncracies might prompt. I proposed, therefore, to try the experiment in a modest and suggestive way only, as becomes any man who is called upon to deal with such questions as these, of indicating a star by which we might possibly navigate in safety. While I waited, however—as I always prefer to do—to hear what others might have to say, the doors were closed upon me, and debate arrested by the operation of the previous question. It occurred to me then that I might possibly generalize my notions in such a way as to render them acceptable to a

majority of this House, as I have accordingly attempted to do in a series of resolutions which I have had the honor to spread upon your records. This bill, with the amendment offered this evening by my colleague [Mr. Stevens] by way of substitute therefor, comes in opportunely as a practical measure, resting, as I think, upon the same general principles, and enabling me to develop the leading ideas of those resolutions in the remarks which I propose to make, in a somewhat desultory way, and without reference to its details, upon the relations established by the war, and the rights and duties bearing upon the question of reconstruction, that have grown out of it.

"And first, as to the status of the rebel States, and the law which is to govern our relations and intercourse, and sit as umpire in the progress and adjustment of the pending controversy.

"These States are either in the Union, or they are *not*. Some people may think it makes no practical difference how we conclude on this point while the war is flagrant. That is not my judgment. It has seemed to me that all the irresolution, all the unsteadiness in our counsels, all the doubt and hesitation and delay, all the apparent obtuseness and obliquity of the moral sense, and many of the differences between good and loyal men here, were mainly referable to the fact of the failure to settle this great question, and settle it correctly in advance. The war was inaugurated on the theory that they were *in*, when the great fact of war, which individuals cannot wage in the social state, and peoples do not wage upon themselves, was a proclamation that they were *out*. The Democrats of the North were willing to accept the fact that they were out, *without war*; to adopt the principle of the *laissez-nous faire*—the 'let us alone'—of the rebel authorities; and to treat with them upon the idea of a *reconstruction* upon that kind of compromise which involves generally a traffic in principles, and that sort of mutuality where all is demand on the one side and concession on the other; where everything is surrendered and nothing obtained, or even stipulated for in the way of equivalent—to treat, in short, either for their return, or for the privilege of going out along with them, and leaving New England in the cold. They were willing to waive the right and the treason absolutely, and declined the alternative of war on the ground that the obligation was an imperfect one, whose performance depended upon the mere will of the contracting parties, and could not be enforced. With them it was peaceable secession, with *reconstruction by treaty*. The ruling thought was, of course, to spare, to save, to do as little harm as possible to those who were not our enemies, but

our brethren—*sisters*, perhaps, I should say, albeit a little 'wayward'—whose anger was to be kissed away—or sweethearts, rather, who were to be mollified into tenderness by dulcet phrases and costly love tokens, or hugged into quietude by the anaconda process of compression, or the sublime mysteries of strategy. The rebels were Democrats, whom it would be a sin to kill, and a greater sin to rob of their sacred property in slaves. Better a hundred thousand free white northern youth should die, than one negro slave should be lost to his proprietor, or employed in arms against him. To carry out this policy we wanted conservative generals who would be sure to hurt nobody, and saw men made *heroes*—by newspaper process, as *great* men are now made since that manufacture seems to have passed out of the hands of Providence—not because they fought, and fought successfully, but because they would not fight at all. We wanted generals who had constitutional scruples about the right of invading the sacred soil of a sovereign State; who had 'kind regards' for the worst and meanest of felons; and were ready to grant *paroles of honor* to men who, by an act of treason intensified by ingratitude and perjury, had basely deserted the flag they were sworn to defend, as no mere Swiss, no soldier of fortune who hired out his steel, could have done without a deep stain upon his escutcheon. But while we were dealing with the heresies and subtleties of the Virginia and Kentucky resolutions of 1798—those fruitful sources of our present woes—instead of striking at once at the heart of the rebellion, that rebellion, thus nursed and cherished and rocked and dandled by ourselves, was swelling in volume, and organizing and hardening into consistence behind the storm-cloud, which was gathering and blackening and muttering its thunders within sight and hearing of this very Capitol, where an American Congress was legislating under its shadow. But the light which was struck out by the collision of hostile bayonets, struggling up through the haze in which we were enveloped, began to dawn slowly upon the country. It was soon reflected back upon these Chambers, and statesmen began to feel that they were in the presence of a great fact, that could not be conjured down by empiricism, or reasoned down except by the logic of artillery. But still they hesitated to accept the fact, and the law of the last session, halting between the two opinions—beginning with the idea of treason, and ending in the alternative of war—although right in itself, was but the expression of the yet lingering doubt whether these States were still *in* the Union or out of it.

“How does the case then stand upon the facts? It cannot be questioned, I think, that in this view the severance is or has been as complete—the *spes recuperandi*, the mere hope of recovery, excepted—as if our forces had been withdrawn, and their independence recognized. They have seized our property, and expelled us from their territories. They have declined the Federal jurisdiction, and ceased to live under the Federal law. They have altered their constitutions of government, and transferred their allegiance to a foreign power. They have invaded our soil. They have claimed and exercised, with the consent of the great Powers of Europe, the rights of belligerents upon the ocean. Under the stern logic of facts we have assented to all this, by releasing the crews of their privateers, instead of dealing with them as pirates, and exchanging prisoners captured on land, instead of hanging them as traitors. We have distinguished between the mere guerrilla and the commissioned soldier of the confederacy. We have blockaded their ports. Treating them as a government *de facto*, and therefore entitled to the allegiance of all its citizens, we have allowed them to shoot as deserters, without retaliation, the unwilling conscripts who have fled to our arms for the protection which we were bound to give them; we have interdicted commercial intercourse with them on the part of the citizens of the loyal States; and we have put them by our legislation, one and all, without distinction as to loyalty, under the ban of the Union, as alien enemies. Nor have we been guilty of any inconsistency herein. The revolt was not of individuals, to be dealt with by the ordinary process of law, like the whiskey insurrection, with which it has been improperly compared. It rose at once to the dimensions of a civil war. It was the result of the corporate, political action of organized communities, sweeping the reluctant and the innocent into its impetuous current, and then merging the individuality—dissolving, as I think, the very life—of these communities, in the revolutionary act of compounding them into a separate and independent nationality. As such we have treated with it in the matter of exchanges, and ignored accordingly the members of which it was composed. We could not do otherwise under the law to which the insurgents successfully appealed, when they repudiated the authority of any common superior, and carried their case before that dread tribunal of nations, where the sword is the arbiter, and the voice of God and humanity, thundering out of the smoke and carnage of the battle-field, is the only one that can be listened to in the adjustment of the controversy.

"And now let us inquire for a moment how the public law of Christendom, as declared in the opinions of the publicists, and the practice of enlightened nations, squares with the great facts to which I have referred.

"It will be found, I think, that the most eminent of these writers are agreed in the opinion, that the parties to a civil war, having no common judge, or common superior on earth, 'must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies,' and that 'when a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, *the State is dissolved*, and the war between the two parties stands on the same ground, *in every respect*, as a public war between two different nations.' This is the language of Vattel, (pp. 425, 427,) and the learned Barbeyrac, in his notes on the treatise of Grotius, (Book 3, cap. 6, sec. 27,) affirms the doctrine by the remark that 'in case of the rising of a considerable part of the State against the sovereign, as for an alleged violation of the fundamental law of the nation, the Government is dissolved, and the State divided into two distinct, independent bodies; and much more does that take place in the civil wars of a republican State, in which the war immediately, of itself, dissolves the sovereignty that subsists solely in the union of its members.' It is in direct antagonism therefore to the *law* which governs now, as to the *facts*, to say that these States are still in the Union as they were before. The theory that this Union was indissoluble refers only to *the right*, to its organic law, and to the purposes of the men who welded these States together; but never was intended to imply that it could not be ruptured by violence—as it has unquestionably been—leaving to the wronged and adhering States their remedy for the breach, not by enforcing a specific performance—which is impossible—but by the recovery of the territory which is ours by the contract, and the expulsion of the delinquents, with the forfeiture of all their rights in and under the Union, from which they have withdrawn. To say with a gentleman from Kentucky, [Mr. WADSWORTH] that this is an admission of the *right* to secede, is to confound the *fact*, which is one thing, with the *right*, which is another. To assert with the gentleman from Missouri, [Mr. BLAIR] that this is a concession of their independence, which would authorize their recognition by foreign Powers, is to forget that we have rights which no violation of the contract by the other party can destroy. It would be just as sensible to insist that a judgment of outlawry was a release of the traitor from

his allegiance, and authorized the Government to which he fled, to espouse his quarrel and adopt him as its citizen.

"Upon this question of the forfeiture of political rights, some further light may be borrowed from the practice of nations in the application of the *jus postliminii*, which refers, according to Grotius and Bynkershoek, as well as to cases of territorial recapture where a whole community is involved, as to those where the goods of a subject, once seized as prize of war, are afterwards retaken from the hands of the captors. And here, I think it will be found that even the provinces of a confederation which have been wrested from it by an enemy, have not always been reinstated in their original privileges—as reason would seem to adjudge that they ought to be.

"Thus, the inhabitants of the district of Drenthe were in 1580 admitted into the confederation of Utrecht, but their country was afterwards invaded and occupied by the Spaniards. After the enemy had withdrawn and evacuated their territory, although it seemed clear to Bynkershoek that they had recovered all their former rights by virtue of the law of postliminy, nevertheless, although they several times petitioned the States General to be readmitted into the Union, no order was taken, and afterwards, in 1650, when their deputies attended at a meeting of the States, they were refused admittance.

"Again, the provinces of Guelderland, Utrecht, and Overyssel, were taken by the French and afterwards recovered. Bynkershoek remarks thereupon, that while they were in the power of the enemy they certainly were not entitled to their former rights as confederates, and on that account their delegates were very properly ordered not to attend any longer at the meetings of the States General; but when they came again into the possession of the States, they were readmitted by a *decree* of that body, restoring them to their former municipal and confederate rights, except that Guelderland was deprived of one vote in the assembly, and several other conditions were imposed, one of which was that they should swear anew to the articles of the confederation as if they were admitted for the first time.

"These, however, were cases of seizure and occupation by an enemy; ours, of a voluntary abdication of Federal rights, and an organized resistance by governmental action to the Federal law. There is no case here, therefore, for the application of the law of postliminy. Some of these States, on the contrary, constructed out of Territories purchased by this Government, were lifted from the posture of subject and dependent provinces upon the platform of the Union, on the condition of

obedience to its laws, and by their voluntary abdication of the privileges so conferred, have, as it seems to me, by an inevitable logic, lapsed back again into the territorial condition. There is no ground upon which it can be claimed that any of them have been the victims of a public enemy, who has wrested them from the possession of their local governments. The action was corporate and social. It was the local governments themselves that sinned. Where they have been recaptured, the local Governors have fled, the local organizations have been dissolved, and their Territories are now under military occupation by the armies of the Union, or under provisional governors appointed by the Executive. This fact alone, as it seems to me, involves the admission that they are no longer in the Union. If they are, that occupation is unlawful. If their governments are dissolved, however, they must, of course, be reconstructed under the auspices of the conquering power, and that not by the Executive, but by the Legislature of the Union, whose sword he bears, and which only, consistently with the genius of our institutions, the past practice of the Government, and the letter as well as spirit of the Constitution, can venture to determine what use shall be made of the Territories conquered by it, and when and upon what terms they shall be readmitted into full communion as members of this Government. It is not certainly the military power that is to reorganize, and modify, and breathe new life into their defunct constitutions. Until the end of subjugation is achieved and the resistance entirely overcome, so as to give place safely to the re-establishment of the civil authority, a military occupation is indispensable, of course. When that period arrives, the sword must be sheathed, and the Territory return to the direction of the law-making power, which will prescribe the rule for its government, and allow to its people the privilege of reorganizing under republican forms. I call it Territory and invoke the law that governs there, because I know of no intermediate condition. To permit any executive officer to declare its law, and set it in motion, and place it under the control of a minority—a mere tithe of its citizens—with power to send delegates to Congress with representation unimpaired and unaffected—even though he should re-enact a part of its abrogated constitution—would be, as I think, a monstrous anomaly, a violation of fundamental principles, and a precedent fraught with great danger to republican liberty. Here is the dilemma. To come back into the Union, it must either be born anew or come back with all its rights unimpaired, except those material ones which have been destroyed in the progress of the war. There is, I think, no middle ground, as there is no power

either here or elsewhere to prescribe terms, which shall abridge the rights or privileges of a State that has *not* been out of the Union, or returns to it in virtue of its original title.

"When I suggest, however, that these States are *out*, it is with this important qualification, that they are out in point of *fact*, with a forfeiture of all their franchises as members thereof, whenever the issue of battle shall have been decided against them; but subjects of it still—members, if you choose—in legal contemplation, so far as regards their obligations and duties under the Constitution, and our right to visit them with punishment for the delinquency, proportioned to the magnitude of their offense. They are in for correction, but not for *heirship*; just like the unnatural child who has attempted the crime of parricide, and only succeeded in dyeing his murderous hands in the blood of his loyal brethren. It is bad logic to infer that because they are out without our consent, and have forfeited their rights thereby, that fact must be attended with a like forfeiture of our own. Nor would I, as already intimated, be understood as admitting that they are out as to foreign Powers, who must respect our *title*, although our *possession* may be ousted, and treat the contest in all respects as a domestic one. No American of the right spirit would allow even a question of this sort to enter our diplomatic correspondence with foreign powers, or consent to compromise our dignity and self-respect—which are at last the best security of nations—by uncovering the maternal bosom to the rude and insulting gaze of the stranger, and inviting his interference, either by misrepresenting the aims of our loyal citizens, or beseechingly deprecating his displeasure. I trust that our just pride as a people will not be again wounded by the production of another book like the diplomatic confessions of 1862.

"It is suggested, however, by a gentleman from New York, on the other side of the House, (Mr. Fernando Wood,) that while we on this side are claiming to be for the Union, the enunciation of these doctrines by my able colleague (Mr. Stevens) amounts to a declaration that we are no longer a Union party. The meaning of this—if it means anything—is, that because the rebel States are *out*, without any agency of ours, but with a large share of the responsibility on the heads of those, who, like the gentleman himself, encouraged the defection by their servility, or by the assurance that they were opposed to coercion—as they oppose it now—and taught them to believe that they could go out with perfect impunity, and that New York and Pennsylvania would go out along with them—the mere statement of the fact that they were out, is evidence that the party of the Administration on this floor is not in favor of

the preservation of the Union! Well, we are in favor, at all events, of preserving all that is left of it, and intend, with the blessing of God, to win back the residue, and pass it through the fire until it shall come out purged of the malignant element that has unfitted it for freedom. But what does the honorable gentleman himself—what do those who vote with him really think on this subject? Does he—do they believe that the rebel States are not out? If he does not look upon them as a new and independent power in the commonwealth of nations, why does he propose to treat with them—not with the revolting States singly, but with 'the authorities at Richmond.' How is it that in his own resolution he proposes, *in totidem verbis*, the 'offer to the insurgents of an opportunity to return to the Union?' Who are the 'authorities at Richmond?' Will he inform us whether they are a people known to our Constitution, or how these States are to return to the Union, if they were never out of it? His tongue confesses it unwittingly—I will not say like Balaam's, who blessed when he intended to curse—but just as did that of the Louisiana claimant who, professing to rest on the same doctrine, stood before this House unconsciously testifying in the same way. He stands, therefore, self-condemned by his own logic, as no Union man. I will allow him, however, the advantage of the admission that it is but a slipshod logic that cannot distinguish between the *law* and the *fact*. But that is true of himself and his party which he unjustly charges upon my colleague. The difference is just this, that although the rebels have spurned and spit upon their northern auxiliaries, rejected all their overtures, and declared that they will no longer associate with them upon any terms, and are not willing that they should even come 'betwixt the wind and their nobility,' he wishes to *treat* for the privilege of *serv'ing* them, while we propose to *fight* for the purpose of chastising them into submission. This may be the result only of a difference of taste; but all history attests that there always are, and there always will be, men who love to wear the livery of a master, and are uncomfortable without it; who regard the collar as a badge of distinction, and would at all events, rather carry it, than quarrel with it. No wonder, therefore, at the opinion so often expressed by men of this sort in relation to the black man, that he would neither run away, nor bear arms against his master, or anybody else. They did him injustice in supposing that he was like themselves. Pompey, who was an *involuntary* slave, is tending toward the North star with a musket in his hand, while his white non-combatant substitute—a *voluntary* slave—is rushing southward with the olive-branch in his hand, into the patriarchal arms.

"The objection rests, however, as I suppose, upon the remark that our right to deal with the rebel States after they shall have been reduced to submission by force of arms, is not a question *under* the Constitution, but *outside* of it. I desire to say, once for all, that I do not concur in this opinion, because I find the war power *in* the Constitution with *all* its incidental consequences. If it is not there, the case is without remedy.

"The doctrine of my colleague, that these States are out of the Union, may seem at first blush extreme. Some people may think it radical, but it is none the less palatable to me on that account. War is a radical disease, and radical diseases are only to be treated by radical means. One earnest and decided man is worth, in times like these, a regiment of temporizers; and that is precisely the reason why the inherent weakness and poverty of the insurgents have been able to match the overwhelming numbers and resources of the North. These are no times for what are falsely called *conservative* men, just because they are wedded to old abuses, and only hug them the closer when they have proved most destructive. I like bold thinkers and operators. Timid counsels have ruined many a State; they have never saved one, and never will. It may be a paradox, but if conservatism has ever operated to save a nation in such a crisis as ours, it has only been, as here, by acting as the dead-weight upon the ploughshare, which has retarded its progress, but made it run so deep into the virgin soil as to make its work a *radical* one. The man who is ahead of his contemporaries is always denounced as a daring and dangerous innovator, and happy if he is not martyred, as the apostle of a new faith, for the singularity of his opinions. I beg gentlemen to reflect, however, whether there is any solid ground short of this on which they can put down their feet with safety. The 'middle passage'—it was the same, I believe, in which the negro was heaved overboard—the '*medio tutissimus ibis*'—the path of traffic and of compromise—is not the one which we can hold safely in a storm like this. If these States are in the Union, with all their rights and privileges unimpaired, they may return to-morrow, even without submission, after being conquered in the field, to conquer their conquerors in the councils of the nation. The most accomplished of the Roman poets remarks that 'conquered Greece subdued her barbarian conqueror, and introduced the arts into unpolished Latium.' The contrary will be the case here. The barbarian will come back into your Halls. The northern Democrat will rush into his arms. The two elements, like kindred drops, by an attraction a good deal stronger than that of miscegenation, will melt incontinently into one. The old bar-

gain will be renewed—'Give us the spoils, and you may take the honors and the power, and rob the northern soldier, the sick, and the maimed, the widows and the orphans of the gallant dead, of the miserable pittance which this Government is pledged to provide for them.' The proclamation of freedom will be revoked; your acts of Congress repealed; your debt repudiated unless you will assume theirs; and yourselves, perhaps, ejected from these Halls. The result is already foreshadowed in the events of the present Congress, wherein—not to speak of other of your past experiments in dealing with that element—a signer of the secession ordinance of Louisiana, permitted to walk the streets of this capital, and *enter* this Hall, as others were permitted, less than three years ago, to *go out* of it, unquestioned—was allowed to vote upon a bogus certificate of a bogus governor, and to vote negatively with the Democracy upon the qualifications of the members of Congress now representing the loyal State of Maryland. And the effect will be, that for all your great expenditures, and all your bloody sacrifices, you will have won back, not *peace*, but a master—the 'old master,' in negro phraseology—who governed you before—as turbulent, as vindictive, and as ferocious as ever. If they had chosen to remain with us, under the idea that they were not *out*, they might, by their superior tact and address, and their habitual control of the northern Democrats, have so embarrassed us, as to render it utterly impossible to carry on a war against them. If they had consented to return in answer to the prayers of their bereaved friends, or to the message sent through Count Mercier, to Richmond—about which an adjourned question of veracity is still, I believe, depending between very friendly belligerents, who exchange hostile messages in the improved shape of invitations to State dinners—we should have been lost. I have always regarded it as a special providence that the arrogance engendered by their ownership of men, both white and black, and the contempt with which they looked upon their vassals here, should have prevented them from retaining or returning to their places in Congress, or even holding out the idea that a compromise was possible. Say that they are in the Union as before and all your sacrifices have been idle, and all the blood spilled by you has sunk into the earth in vain. Bring them back, and you cannot even bind them by gratitude, or purge them by oaths, of which they make no account, as the whole history of the rebellion, which began in perjury, abundantly shows—which are like the ribbons that were insultingly stretched by the Parisian mob in front of the Tuileries to protect the ill-fated king and queen of France—and which grave

Senators have so recently denied your power to prescribe. The President has dealt kindly with the *neutrals*. Has he propitiated any of them? Our predecessors here have followed the example. Look at the facts attending our organization, and say whether even confidence and charity are followed by either gratitude or loyalty. No, you must throw the dissevered fragments—the *'disjecta membra'*—of this great Government, into the caldron, with a hot fire beneath, and you may evaporate the virus, but not otherwise.

"Taking them, however, to be *out*, or that the case has passed from under the municipal, into the domain of public law, what is the authority which that law gives us over the rights and property of an enemy?

"Before entering on this question, however, I desire to say a few words in relation to the supplementary resolution which we have been endeavoring to amend. I would have been glad, as I have already stated, to vote for its unconditional repeal, for the reason that the confiscation and distribution of the great baronial possessions of the rebel leaders were, in my judgment, an essential element in any feasible plan of reconstruction, and that there were other means under the Constitution than the very inadequate one of the judicial attainder, to reach the estates of those who had broken the covenant between the Government and people. That, as it seems to me, was the opinion of the men who framed the original act of 1862. It is tolerably clear, I think, from the history of the resolution by which it was unfortunately supplemented, that it was not in accordance with the sentiments of that Congress—as I think it is not with the opinion of the present one, or of a majority of the people whom it represents. It was thrown in only, as I understand it, to remove the scruples of the Executive, and to make the best bargain that could be had at that time. That was eighteen months ago. But nothing was ever said more truly than that 'times change, and we along with them,' even to our material framework, which we shift off as well as our opinions. The world does move—as Galileo still insisted even when he was obliged to recant his astronomical heresies—although it sometimes moves slowly. The President moves too—and slowly also—as he needs must, who is called upon 'to bear upon the shoulders the weight of mightiest monarchies.' Everything moves—except some of our generals—because war is a great teacher, and thought quickens and ripens rapidly under the fires of revolution. Even our reluctant and unsympathizing friends on the other side, are hurried along by the resistless current that sweeps our statesmen like straws upon its surface. Nay, even

some of my own Republican auxiliaries on this side, have been drifting with the tide into waters too deep to have been ever searched by the plummet of *conservatism*. But a little over three years ago, as I can testify, he was a bold man—as he was sure to be a sadly abused one—who would have invoked *coercion* by force of arms, and ventured to hint at the possibility of the negro, as the soldier who was to be thrown at last, like the sword of Brennus, as the make-weight into the scale. Two years ago, there was scarcely a Republican in this House who would have voted for the latter proposition. One year ago every gentleman on the other side would have revolted at it, as they had done before the bombardment of Sumter against coercion. Ten months ago, the unarmed and defenseless negro was flying like a hunted stag, and flying for his life, before a cowardly and brutal mob, in the streets of the very metropolis of the western hemisphere. Two years ago, the dark-skinned child of the tropics was struggling slowly up to the unwonted privilege of cracking his whip over a Federal mule-team, to the horror of all political ethnologists and unbelieving conservatives, who howled denunciations at the Pathfinder of the West, and shouted hosannas to the loiterer at Manassas, and the author and promulgator of Order 'No. 3.' Now Scipio (Africanus) has a musket in his hand, and stands revealed as a soldier and a man, of higher physical and moral type than his persecutors themselves, in the light of the fiery surge that swept the trenches of Fort Wagner, and under the iron storm that flashed from the blazing ramparts of Port Hudson. The flesh that fed and crisped and crackled in the flames of a metropolitan *auto da fé*, has turned out to be human, and the blood that was licked up by the devouring element, to be as red and warm as our own, the physiologists and philosophers to the contrary notwithstanding. And now behold the miracle! But yesterday, as it were, only forty-one members of the negro-hating, and negro-disparaging party on this floor—hating him in the name of Democracy as a freeman, but loving him too much as a slave to peril his valuable life—could be brought to vote against buckling the harness of the Union on his back, and anointing him as the soldier of the great Republic. Yes, the world does move, and the Executive along with it. Looking, as he does now, from a different stand-point from that occupied by him eighteen months ago, I would not despair of his approval of a bill to repeal absolutely the unfortunate, emasculating, and, as I think, ill-advised joint resolution of 1862. With all his habitual caution—yielding slowly to his strong convictions of duty and taking no step backward—he has made even greater strides than this.

I have confidence in his judgment, as the nation has in his integrity. I have sometimes thought that he was a little slow, in a case where promptitude was worth armies; although I could well appreciate the sense of responsibility that must necessarily weigh upon the man who holds a trust the most responsible and novel that has been cast upon any man in the world's history. I dread nothing but the excess of that conservative element which is so ill-suited to occasions like the present. These are times when men cannot afford to doubt, and fear cannot be safely allowed a place in public counsels. The aphorism of Junius is but the translation of the thought of a greater than himself:

“Our doubts are traitors,
That make us lose the good we oft might win,
By fearing to attempt.’

“While I would have voted, however, for the repeal of the supplementary resolution, it was not to that portion of the act providing the punishment of treason in the ordinary forums, that I would have looked for such a remedy as the case seemed to me to demand. With every disposition to allow the fullest effect to the argument that looks in what might be called the radical direction, and claims that the forfeiture may be, in cases of attainder under the Constitution, of the whole estate in lands, and with the knowledge that a controlling reason for the change in the English law, which we had copied, was to be found in the tendency of the earlier practice to break up the estates and families of the great nobility and accumulate their possessions in the hands of the Crown, I could not permit myself to be beguiled by my wishes into the belief that the framers of the Constitution intended anything but what they have so obviously said. Taking as my guide the plain language of that instrument, the state of the law in England, and of the prevailing public opinion there and here at the time of its adoption, together with the contemporaneous exposition which it received at the hands of the men who shared so largely in its preparation and advocacy, and the construction given to the disputed clause by all the commentators—without a single exception, so far as I am advised—I cannot bring myself to doubt at this late day as to its meaning and purpose, however much they may run counter to my own inclinations. To yield to them, with my strong convictions, would be to involve me in an act of infidelity as well to my profession as to my legislative trust, by making the wish and not the judgment ‘father to the thought.’ I must take the Constitution as I find it written, in spite of the supposed absurdity of authorizing a forfeiture for life in the case

of a crime whose usual penalty is death, and where the very attainder, which is a legal and social death, determines that part of the punishment at the very point where it begins. If ingenious gentlemen here had adverted to the process of outlawry, so familiar to British jurisprudence in precisely such cases, and not entirely unknown to our own, or to the possibility of annexing a punishment less than that of death to the highest of crimes, they would not, perhaps, have considered the *reductio ad absurdum* as quite so complete as they seemed to think it. If we are to punish those who flee from justice into other lands by judicial process, we shall have to draw from the lumber rooms of the profession the old machinery of the *exigent*. That we may come to treat the highest of crimes as worthy only of the lightest of punishments is not improbable when we find it not only dealt with as eminently chivalrous and respectable, but absolutely rewarded, by allowing its perpetrators to vote with the minority in the organization of the great council of the nation itself, and granting funeral honors to their families, without even a rebuke.

"With this reading of the disputed clause of the Constitution reluctantly conceded, and even under the opposite hypothesis—supposing it to be the true one—I can see nothing practical in the attainder by judicial process, and no remedy therein for present or prospective evils, in the infliction of punishment upon the guilty. The Constitution provides that 'the trial of all crimes except in cases of impeachment shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed;' and again, that 'no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment by a grand jury;' and further, that 'in all criminal prosecutions the offender shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed.' How, then, are you to try, how convict under such limitations as these, where your jurisdiction is ousted, where you are without courts, and where the jury of the vicinage—the peers of the delinquent—are the very partners of his guilt? It would be the merest of mockeries to attempt it. If the arch-apostate himself were to stalk again to-morrow into the Senate Chamber of this nation, reasserting his rights, and reclaiming his abdicated seat in that body, you might arrest him, it is true, but there is no jurisdiction this side of the Potomac—that river of oblivion which sweeps around your capital walls—that could take recognizance of his manifold crimes. The salutary guards which have been borrowed from Magna Charta, and thrown around

the person of the criminal, were not intended for a condition of things like the present. They suppose a state of universal peace, where the law shall speak its potential voice in all its forums, and through all its accredited organs, and not a condition of things where its oracles are silenced, and its priests driven from their very altars. The maxims of peace are not suited to a condition of war. It has run into a proverb that the laws are silent amid the tumult of arms. Where the ordinary jurisdiction has been declined, and no common superior is recognized, the case has passed, *ex necessitate*, into a higher tribunal by the election of the recusant himself, and must be left to the arbitrament which he has chosen, with all the consequences of a judgment there. It has not passed, however, beyond the domain of the Constitution, as the language of my learned and able colleague [Mr. STEVENS] would seem to import. The men who framed that instrument foresaw the exigency with their usual perspicacity, and with their usual wisdom have provided for it, as I think, abundantly. If they have not, then the late Attorney General was right in declaring that there was no warrant for waging this war against the rebellious States, and wrong in presenting himself and his party at the recent elections in Pennsylvania as the advocates of its vigorous prosecution; and then there is no authority for shooting down a rebel on the battle-field. Those who insist that there shall be no punishment for the traitor except by the process of judicial attainder, intend that he shall not be punished at all—mean, if they know whereof they speak, entire immunity, as well to him as to his wife and children, for all his crimes.

"I make no account, therefore, of the first four sections of the act of 1862, which, by the way, involve no forfeiture except of property in slaves. True, they impose fines which may result—as it was no doubt intended they should do—in the divestiture of the fee, but whether those fines are in conflict or not with that provision of the Constitution which declares 'that excessive fines shall not be imposed or cruel and unusual punishments inflicted,' I shall not stop to inquire, for the reason already suggested, of the utter impracticability of making that portion of the law effective in its application to the guilty parties.

"Upon the remaining sections of that act, however—always excepting its *expatriation* clause, whose wisdom at a time when the country so much wants soldiers for its armies and laborers for its fields is not any more obvious to me than that of the repeal of the edict of Nantes, or the expulsion of the Moors from Spain—I could have planted myself with assured confidence. I find nothing there that looks to an attainder—nothing

that even touches the *person*—nothing but authority to seize enemies' property, and carry it into court for condemnation by a proceeding *in rem*—against the *thing* itself—as lawful prize of war. The question of treason is practically adjourned, although not absolutely waived by the posture of the belligerents. The framers of that law have obviously looked to this as the alternative, well knowing that, although it is a maxim of the common law that there is no wrong without a remedy, there was no remedy here if this one failed.

"And this leads me back to the question, What is the authority that the public law, which is the law of the case, and *pro hac vice* the law of the Constitution, gives us over the rights and property of an enemy? And on this point Bynkershoek, of whom Chancellor Kent remarks in *Griswold vs. Waddington*, (16 Johnston, 438,) that he is 'one of the most distinguished writers on public law, and that his treatise on the law of war has been more quoted and relied upon as authority in Europe and America than that of any other writer,' says that 'if we take for our guide nature, that great teacher of the law of nations, we shall find that anything is lawful against an enemy,' (p. 2;) and further, that a nation that has injured another is considered, with everything that belongs to it, as being confiscated to the nation that receives the injury, (p. 4;) and also that 'if we follow the strict law of war, even immovables may be sold and their proceeds lodged in the public treasury, as is done with movables, though throughout almost all Europe immovables are only registered, that the treasury may receive during the war their rents and profits, and at the termination of the war, the immovables themselves are by treaty restored to their former owners.' The same doctrine is laid down by Wildman, (vol. 2, p. 9;) and in the case of *Brown vs. The United States*, (8 Cranch, 110.) the broad principle was assumed that war gave the sovereign full right to take the property of the enemy wherever found, and that the mitigations of this rigid rule, which the wise and humane policy of modern times has brought into practice, may more or less affect the exercise of the right, but cannot impair the right itself. It has never been disputed, however, that the property of the sovereign may be confiscated, and this on the ground that public wars are wars only between sovereigns.

"And now let us look at the practice.

"On the 2d of April, 1599, the States General issued an edict with regard to all kinds of property, wherever found, which is in these words: 'We declare lawful prize all persons and goods'—the word *bona* in the civil law including every kind of prop-

erty, but chiefly applicable to real estate—'situate or being under the jurisdiction of the King of Spain, wherever the same may be taken.'

"And again, the States General, on the 14th of July, 1584, declared the people of Bruges and Vrye, who had gone over to the Spaniards, to be their enemies, and ordered all their goods, actions, and credits, public as well as private, to be confiscated. And afterwards, when the people of Venloo had also gone over to the Spaniards, the Earl of Leicester, by his edict of July 9, 1586, declared them guilty of the crime of high treason, and ordered all their goods, movable and immovable, and all their actions and credits, to be confiscated. 'Nor must it be believed,' says Bynkershoek, 'that these things were decreed concerning those of Bruges, Vrye, and Venloo, merely because they were not so much enemies, as traitors.'

"It seems, then, that though the strict law which authorizes the seizure of everything, has been modified by the usages of nearly all Europe, so as to restore it by treaty in the cases cited—which by the way are more than five hundred years after the Norman conquest—the practice was otherwise in one of the most liberal, enlightened, and republican nations of that continent, as it certainly was during the earlier ages of republican Rome. There is as much difference, however, between usage and law, as there is between generosity and justice, in dealing with the affairs of nations.

"In the conquests of ancient times, however, even individuals lost their lands. 'Nor is it a matter of surprise,' remarks Vattel, 'that in the early ages of Rome such a custom should have prevailed. The wars of that era were carried on between popular republics and communities. The State possessed very little, and the quarrel was in reality the common cause of all the citizens. But at present one sovereign wars against another sovereign, and not against unarmed citizens.' (P. 388.)

"The gentleman from Kentucky [Mr. WADSWORTH] states the rule which rests upon this idea, and distinguishes between the sovereign and the subject, without reference, however, to the question whether the citizen is armed or not, as he is unquestionably in the present quarrel. He does not deny, if I have correctly understood him, that the property of the sovereign himself may be lawfully taken. In the same speech, however, he declares, and rightly, too, that the sovereignty here is in the people. By his own logic, therefore, the property of individuals may be lawfully taken in a war between republican States, which, as Vattel remarks, is in reality the common cause of all the citizens.

"But we are not yet done with Vattel. He says further :

"'But a conqueror who has taken up arms not only against the sovereign but against the nation herself, and whose intention it is to subdue a fierce and savage people, and once for all to reduce an obstinate enemy, may with justice lay burdens on the conquered nation, both as a compensation for the expenses of the war and as a punishment.' (*Ibid.*, 389.) 'He may, according to the degree of indocility apparent in their disposition, govern them with a tighter rein, so as to curb and subdue their impetuous spirit; he may even, if necessary, keep them for some time in a kind of slavery.'

"And again: 'Although,' as he suggests, 'towns and countries should not be deprived by their conqueror of their liberties, privileges, and immunities on account of his quarrel with their sovereign,' he adds :

"'Nevertheless, if the inhabitants have been personally guilty of any crime against him, he may, by way of punishment, deprive them of their rights and privileges. This he may also do if the inhabitants have taken up arms against him and have thus directly become his enemies. In that case he owes them no more than what is due from a humane and equitable conqueror to his vanquished foes. Should he merely and simply incorporate them with his former State, they will have no cause of complaint.' (*Ibid.*, 387.)

"And further :

"'The whole right of the conqueror is derived from justifiable self-defense, which comprehends the support and prosecution of his rights. When therefore he has totally subdued a hostile nation, he undoubtedly may in the first place do himself justice respecting the object which had given rise to the war, and indemnify himself for the expenses and dangers he has sustained by it. He may, according to the exigency of the case, subject the nation to punishment by way of example. He may even, if prudence requires, render her incapable of doing mischief with the same ease in future. Some princes have contented themselves with imposing a tribute on the conquered nation, others with depriving her of some of her rights—taking from her a province, or erecting fortresses to keep her in awe.' (*Ibid.*, 388.)

"'But if he has to do with a perfidious, restless, and dangerous enemy, he may by way of punishment, deprive him of some of his towns or provinces, and keep them to serve as a barrier to his own dominions. Nothing is more allowable than to weaken an enemy who has rendered himself suspected and formidable. The lawful end of punishment is future security.' (*Ibid.*, 384.)

"Grotius remarks, however, that 'in civil wars, be they great or small, there is no change of property but by the sentence of a judge;' but the learned Barbeyrac, in a note on this passage, says that the civilian Ulpian distinguishes between a *real* war and a *civil* war, on the ground that the former is made between those who are enemies, and animated by the spirit of enemies, which prompts them to endeavor the ruin of each other's States; whereas, in a civil war, however pernicious it often proves to a State, both parties are supposed to intend the preservation of the State. The one is only for saving it in one manner, and the other in another. So that they are not enemies, (*inter quos jura captivitatum aut postliminium, or postliminiorum, fuerunt, &c.*) and every person of the two parties continues always a citizen of the State so divided.

"The result of all these authorities, then, is that the present is not a *civil* war only, but a *real* war; that by the law of nature and of nations in such cases, the treatment of the conquered depends on the particular circumstances of the case; that everything is lawful; that everything belonging to the offending party is confiscated; that the practice of nations has authorized the forfeiture even of the real estate of individuals; that this was more especially authorized in quarrels between republics; that where the quarrel is not with the sovereign, but with the nation, and the intention is to subdue a fierce and savage people, the conqueror may lay burdens on them, not only by way of compensation but of punishment; that if they have been personally guilty of any crime, and have taken up arms against him, he may deprive them of their rights, and owes them no more than what humanity and equity require; that he may do himself justice respecting the object which has given rise to the war, and indemnify himself for the expense and damage he has sustained; that he may subject his enemies to punishment; and that he may render them incapable of further mischief. *Indemnity, security, and punishment*, are all, therefore, means of self-defense which may be legitimately used.

"And now let us inquire whether the forfeiture of the estates and property of the traitors—of those who have been actually in arms against us—whether they consist of lands or slaves, is required for these purposes. If it be, there is an end of the question. I have no desire, individually, that anything shall be done for the purposes of vengeance only. '*Væ victis*' is not the maxim of a humane conqueror. '*Parcere subjectis, debellare superbos*' is the rule by which I would be governed. I would not exclude the idea of mercy. I agree with the great poet of human nature, that

"It becomes
The throned monarch better than his crown;
And earthly power then shows likest God's,
When mercy seasons justice.'

"I am not clear, however, as to the wisdom of a proclamation of amnesty in advance, as a measure of pacification, without limits as to time, and where submission after conquest, and when it is no longer a virtue but a necessity, is to be rewarded with the same impunity as a voluntary return to duty before that time. But what is the offense, how much have we suffered from it, and how is its recurrence to be prevented?

"I think I may safely say that human history presents no parallel to this rebellion. Since the revolt of the rebel angels there has been no example of an insurrection so wanton, so wicked, so utterly causeless, and so indescribably ferocious and demoniac as the present. It was not the case of the oppression of a Government, whose weight had borne heavily upon the people. It was none of a violation of the fundamental law. The object was not redress, like that of our Revolution, but destruction. It was a rebellion against the majority rule for the purpose not of reforming, but of overthrowing the Government, and erecting upon its ruins another of an oligarchic cast, whose corner-stone was property in man. It was the product of a system which threw all the lands of the South into the hands of a few men. It involved an act of aggravated treason against a humane, paternal, and unoffending Government. It has been conducted with a degree of inhumanity that has no example except in barbarian wars. It has involved to us an enormous expenditure of money and of blood. Its suppression has become impossible without removing the cause of strife, and disabling our enemy by liberating his slaves, and arming them against him. It cannot be repaired. There is no reparation possible that would be commensurate with the injury. Can you breathe new life into the bones that ornament the necks and fingers of southern dames, or bleach unburied, without even the humble privilege of a grave, on southern battle-fields? Can you reclothe them with the comely vesture that has been given to the vultures of the southern skies? Who shall restore the shattered limb; who fill the vacant chair at the family fireside; who give back the husband and the father, or dry the tears of the widow and the orphan? What trump, but that of the dread archangel, who gathers the tribes of the earth for the last solemn judgment, shall awaken the gallant dead who sleep in bloody garments in their beds of glory, from their deep repose? Mock not the grief that is unutterable by the suggestion of indemnity or reparation.

'Give me back my legions!' was the passionate exclamation of the Roman Augustus, when a swift messenger brought to him the tidings of the slaughter of Varus and his brave companions in the forests of Germany. 'Give me back my children!' is the wailing cry that will burst from the bosom of the American mother, who weeps like Rachel for her first-born, by the waters of the Merrimac and the Ohio—or mock me not with the idea of reparation. There is no reparation for it, as there can be no punishment, except in the divestiture of the rights, and the seizure of the estates of the guilty leaders. There is no security except in the distribution of the latter, and the complete exorcism of the hell-born and hell-deserving spirit that has wrought all this world-wide ruin.

"These things are necessary. Is there anything in the law of nature to prevent them? Gentlemen object that to seize the inheritance would be to visit the sins of the guilty upon the innocent. They plead for the wife whose counsels have driven the husband into rebellion. They weep crocodile tears for the offspring who have been taught to spit upon the flag of their country, who are without title until the decease of a parent who may happen to die intestate, and upon whom no law of nature, but only the law which he has violated, would in that case have devolved the succession. The widow and the children of those, however, who have fallen in the effort to suppress this unholy rebellion, have no share in their sympathies. The chances of war may strip them of their inheritance, but that makes no difference with them. They take no account of the fact that nature and Providence have alike decreed that the sins of the fathers, and even their *misfortunes*, shall be visited upon their children, and that the law which authorizes the sale of the estate for the debts of the former has everywhere affirmed its justice. The misfortunes of a northern man and his death in righteous battle at the hands of a Southern assassin, may reduce his offspring to beggary. All this is right; but to allow the family of the traitor who has dealt a foul blow at the social state, and stricken down all the securities of property, to suffer, is regarded as a great injustice. The felon-brood may run its plowshare over the bones of the loyal martyr, while his children are perhaps eating the bread of charity in their northern homes, and it is all right, because the former are the salt of the earth, and a just punishment would only exasperate them into a new rebellion. Let them rebel. A just poverty will render their efforts harmless, and, by teaching them the value and respectability of labor, make them only wiser and better men. With my consent they shall never trample upon the relics of a northern

soldier. I would carve out inheritances for his children upon the soil that his sword has ransomed, and his blood baptized and fertilized. God's justice demands it, and the heart and conscience of the American people will say, Amen.

"But gentlemen here insist that we cannot subdue the revolted States, and ask triumphantly where there is an independent Government with ten millions of people, maintaining itself for three years, that has ever been conquered? What do they mean by this language? Do they intend that we shall not conquer them if they can prevent it? Why do they insist on exaggerating the numbers, and prowess, and resources of the enemy, and ignoring the facts of history, to show that subjugation is impossible? Do they participate in the feeling which they have done so much to inspire, that one of this barbarian rabble which claims to belong to the master race, and rejoices to hear itself called a nation of Cavaliers by degenerate spirits on this floor, is equal to at least six northern freemen, with all the advantages of an unbounded credit and a high civilization? When they say here, and say to the country, that twenty-three millions of white men, with four millions of blacks—all battling for liberty, and with these great advantages in the struggle—are unable to subdue less than four millions of their own race, without credit or resources, and with no higher inspiration than slavery, they libel the people of the North, by declaring in effect that they are not worthy to be free. But what do they propose, in view of these opinions, supposing them to be true? They say that they wish to preserve the Union, but that is not to be accomplished by fighting for it. They desire to treat for its restoration. Their nostrums are, in the language of a gentleman from Indiana, 'conciliation and concession.' Well, the former has been tried under border State counsels. We carried on the war for eighteen months on the principle of doing as little harm as possible to our enemy. They have declared, however, again and again, that they will only treat on the footing of their entire independence. Negotiation admits the fact of secession, if not the right, and involves only the alternatives of recognition, or reconstruction on such terms as they may choose to dictate. Do gentlemen here propose to avoid dismemberment, and preserve the Union, by going into the confederacy? Is this the concession that is to be the peacemaker? Is this the errand on which we are to send ambassadors to pass under the Caudine yoke? No. Gentlemen here may humble themselves to the dust, and confess their unworthiness in the presence of this superior race, but they have mistaken their masters, the people, if they suppose that they have any idea of falling into the bare-

footed procession of mendicants, which is endeavoring to find its way South, in order to kiss the black stone at the Mecca of treason, to which they turn so reverentially in their speeches here. The people are high-spirited, if their servants are not. They know that if we have not whipped the rebels, it is only because we have taken counsel from the men who thought we could not. They intend to clear up this aspersion on their manhood, by showing that they can not only subjugate the rebels in the South, but that they can do the same, if necessary, with their sympathizers in the North. They have made up their minds to chastise the self-abasing thought out of those who have entertained it, and to preserve this Union at every sacrifice, and woe to him who ventures to gainsay their decision.

"But then there is a difference of blood, which renders conquest, and would, by the same logic, render a harmonious reunion, impossible! Gentlemen on the other side insist upon distinguishing, to their own disadvantage, between the North and South in this particular. They tell us that the latter are a nation of Cavaliers, while we are only Puritans, or Quakers, or Pennsylvania Dutch. Well, if it were true, and they were twice as numerous as they are, there is nothing in the facts of history to warrant the servile reiteration here, of the Richmond vaunt that they cannot be conquered, and will die in the last ditch, if necessary. The little Island of Great Britain holds in bondage the Celt of Ireland and the hundred millions of India, while the Mantchou Tartar dominates over three hundred and fifty millions of Chinese. Alexander left the world as a legacy to his generals, and the Ottoman still sits upon the Bosphorus, and sways his scepter over the imperial city of the East. But it is not true. Gentlemen on the other side are as much out, I think, in their ethnology as in their history. There is no distinction of blood, and none of habit or opinion, except that which must prevail between a higher civilization and a lower one. If they mean that the men who colonized the South were a superior variety of the same stock, they speak in ignorance of the fact that the New England Pilgrims were the very highest and purest type of the genuine Englishman, abandoning high social positions and comfortable homes, in the quest of liberty in the New World, while the colonists of the South were, with a few exceptions, a motley and miscellaneous herd of mere adventurers, some flying from their creditors at home, and others rejected by the stomach of the Old World, and vomited *per force* upon our shores. If they mean that they are of the class which believes in the divine right of kings, in the idea of an exclusive caste, and that free society is a failure, then they are, perhaps, right.

But these opinions were not imported by them. They are of indigenous growth. They are the legitimate offspring of the institution which turns man into a chattel, and makes him the property of his fellow. They are the results of a social system that ignores the idea of republican equality, and cannot possibly exist—as it never yet has existed—in any other than an essentially aristocratic State, which it must necessarily engender, if it does not find it ready-made. In this sense of the word they are indeed a sort of bastard Cavaliers—with this difference however—that the type of the class was a pattern of knightly faith, who honored and worshipped his God, his lady, and his king; while this—the counterfeit presentment—is a sort of Jonathan Wild—half highwayman and half footpad—rejoicing in treason, murder, perjury, and robbery, and signaling his faith and gallantry by lynching Methodist preachers, selling or burning negroes, or hunting them with bloodhounds, and persecuting helpless and unoffending Yankee schoolm'ams. And yet there is not a miserable sandhill in the Carolinas who does not claim, upon northern testimony, such as we listen to here, a lineal descent from the companions of the Conqueror, and strut and swagger with an air even more lordly than the sans-culotte Mosquito king, or the equally ambitious and pretentious native of the Gold Coast, who, in complete destitution of all nether integuments, buttons up his superior man, and treads the deck of a man of war in the regimental coat of a British officer.

"There is one fact I admit, and it is the only one that does seem to indicate an ethnological difference, and that is that the newly invented Cavalier, like the Frenchman, and the Spaniard, and the other dark-skinned races of southern Europe, crosses readily with the black man—as the Teuton rarely does, with either the black man or any of the Celtic tribes, whose politics, ignoring generally the individual man, know no Government without a king, as their religion knows no Church without a pope. The blood of these two great families of man, flowing side by side in parallel currents for more than a thousand years in France, has never intermingled, and the example of the French and Spanish settlements in Louisiana, Florida, and the Canadas, is evidence that they do not intermingle here, but that the Latin races, like the Indian, are dying out under the shadow of the paler Northman. I leave the negro, however, and his place in nature and the social scale, to the ethnologists, like the gentleman from Ohio, only advising further researches in this new and interesting branch of political science. I am not personally averse to these speculations. I do not know whether the question of politics may not turn out at last to be no more than a ques-

tion of ethnology. Setting the darker races aside, I have been sometimes tempted to think that I could almost determine *à priori* from the physiognomies around me here, the political complexions of the men to whom they respectively belonged. On this hypothesis I should have put the gentleman from Ohio just where I find him.

"I do not, however, insist upon the fact just mentioned as conclusive upon the point of consanguinity, and am willing to confess, if their friends here will consider it no disparagement to the chivalry, that we belong to the same family. I would not underrate the stock either in its courage or capabilities. They are just as good in that respect as ourselves, and no better. That we do not harmonize is only attributable to the institution that makes them fierce and proud and barbarous, and haters of everything that savors of democracy. Take that away, and we shall run together again like two globules of mercury. Take that away, and there never was a people more homogeneous than ourselves, with the exception of the one disturbing element, the Celtic Irishman, who, with high courage and quick and generous impulses, if he cannot be absorbed—or, if gentlemen on the other side prefer the etymological hybrid, *miscegenated*—will probably be subdued into habits of republican obedience under the instruction of the Yankee schoolmaster. Take that away, and we shall have no one cause of discord left.

"Rather, however, than do this simple thing—demanded as well on grounds of consistency as of security—gentlemen on the other side, who admire the Cavalier and dislike the Puritan, would prefer to treat with the former at the expense of the latter. In the Cincinnati convention of 1856, a delegate from Pennsylvania declared that in case of a separation, that State would go with the South. New York was expected to take the same direction, and upon these assurances the south went out. The programme was that the pestilent Puritan, who would think and talk at all hazards, because he claimed it as his birthright, must be excluded. There was no place in any plan of reconstruction for him. New England was to be left out in the cold.

"Leave out New England in the cold! Well, I am no Yankee. No drop of my blood was ever filtered through that stratum of humanity. I claim, however, to be a man. I think I love liberty above all things. I know that I can respect and admire courage, and constancy, and high thought, and heroic achievement, wherever I may find them. I would not quarrel even with an overstrung philanthropy. I can always excuse the errors that lean on the side of virtue, and find fanaticism

much more readily in that devil-worship of slavery, that would be willing to sacrifice not only all New England but even the Union itself, upon its horrid altars, than in those noble spirits whose sin is only their excessive love for man. I may speak, therefore, without prejudice.

"Leave out New England in the cold! I doubt whether even this would chill her brave heart, or quiet its tumultuous throbbings for humanity. Though no ardent southern sun has quickened her pulses, or kindled her blood into lava, no frigid neutrality has ever frozen her into stone, when the interests of liberty appealed to her for protection. She has been ever faithful to the memory of the great idea, which brought her founders across the ocean, as the only colony that landed in this newly discovered hemisphere upon any other errand than the search for gold. I cannot forget that it was this proscribed race that inaugurated the Revolution, by forging in their capital the thunderbolts that smote the tyranny of England, and dyeing their garments with its first blood upon the commons of Lexington. Leave out New England in the cold! You may look unkindly upon her, but you cannot freeze her into apathy, any more than you can put out the light of her eyes, or arrest the missionary thoughts which she has launched over a continent. It was not New England that stood shivering in cold indifference when the boom of the first rebel gun in Charleston harbor thrilled along her rock-bound coast. Taking no thought of cost or consequences, she rushed down like an avalanche to avenge the insulted flag of our fathers, and Massachusetts was glorified by a second baptism when the blood of her sons dyed the paving-stones of the city of Baltimore. I would it had been my own great State, whose drum-beat was the first that waked an echo in these Halls, which had won the honor of that sacrifice. But it was not so ordained. Leave out Massachusetts in the cold! What matters it that no tropical sun has fevered her northern blood into the delirium of treason? I know no trait of tenderness more touching and more human, than that with which she received back to her arms the bodies of her lifeless children. 'Handle them tenderly,' was the message of her loyal Governor. Massachusetts desired to look once more upon the faces of her martyred sons, 'marred as they were by traitors.' She lifted gently the sable pall that covered them. She gave them a soldier's burial and a soldier's farewell: and then, like David of old when he was informed that the child of his affections had ceased to live, she rose to her feet, dashed the tear-drop from her eye, and in twenty days her iron-clad battalions were crowning the heights, and her guns frowning destruction over the streets

of the rebel city. Shut out Massachusetts in the cold! Yes. You may blot her out from the map of the continent: you may bring back the glacial epoch, when the Arctic ice-drift, that has deposited so many monuments on her soil, swept over her buried surface—when the polar bear, perhaps, paced the driving floes, and the walrus frolicked among the tumbling icebergs—but you cannot sink her deep enough to drown the memory of Lexington and Concord, or bury the summit of the tall column that lifts its head over the first of our battle-fields. ‘With her,’ in the language of her great son, ‘the *past* at least is secure.’ The muse of history has flung her story upon the world’s canvas, in tints that will not fade, and cannot die.

“But while we are told by gentlemen on the other side that we cannot conquer the South, we are somewhat inconsistently charged, in almost the same breath, with a desire to protract the war for the purpose of perpetuating our own power, and asked imperiously how long it is to continue, and when and how it is to end. Allow me to say, in the first place, that the prolongation of the war is not the means which a rational man would adopt to secure the ascendancy of the Republican party. No administration in any free country has ever been strong enough to stand up successfully in the face of a long and expensive war, where results have proved incommensurate with means, and enormous armies that wanted to fight, were compelled to stagnate in inglorious repose. None has been strong enough to carry on its shoulders many such generals as the unready captain who is the idol of the Democracy, or him who was just half an hour too late at Williamsport. No rebellion was ever put down by heroes of the Fabian type, or instrumentalities like the spade. No country is rich enough to hold such masses of men inactive for indefinite periods of time, and under the command of generals who fortify when they ought to attack, and turn away whenever the enemy turns upon them. If there is anything I dread and deplore, it is the tenacity with which such men are retained after repeated failures. If there is anything which gentlemen on the opposite side desire, it is to see this struggle protracted under the auspices of just such leaders—who have invariably been their especial favorites—until the patience of the country is exhausted, and its credit entirely ruined. I think I understand them. They want no Grants or Butlers; but they know that another McClellan will arm them with the argument that a Republican Administration is inadequate to the times. They do not want this war to terminate until the next presidential election.

"To the question, however, how long it is to continue, an apt response might readily be found in the stormy exordium of the Roman orator when he drove the infamous Catiline from the hall of its august Senate: 'How long, O Catiline, wilt thou abuse our patience? How long will thy unbridled audacity parade itself insultingly here?' That, however, would savor too much of the Yankee, by answering one question with another. Allow me then to respond a little more directly, that it will continue just so long as the interrogator and his confederates here and elsewhere, shall continue successfully to embarrass the Government in its prosecution, and to encourage protracted resistance by assurances so often repeated on this floor, and so eagerly caught up and reiterated by the rebel presses, that we cannot conquer the insurgents. The last hope of the rebels is confessedly in the success of their sympathizers here.

"But these gentlemen, the neutrals of the border and the *conservatives* of the North—Arcadians all—have, I think, about performed their mission. They have done, not the work they intended, but the one they have been put upon by the great Ruler of nations. It was a bloody work, but it was, perhaps, a necessary one. A blow struck at the heart of the rebellion at its outset, in the spirit of the proclamation of Frémont, would probably have made an end of it for the time being, while it preserved its cause. The conservative statesmen were wanted to make the remedy radical and sure, by prolonging and exasperating the strife, and intensifying and universalizing the very narrow abolition feeling of the North. It was the voice of Jehovah that spake from the iron throats of those engines that hurled their defiant missiles against our flag at Sumter, just as the same voice thundered from the clouds and darkness of Sinai, when it promulgated to the world the great law of humanity. It was the great proclamation of freedom to the oppressed—antecedent that of the President by nearly two years—that pealed in the ears of the lordly chivalry who held high carnival on that memorable day on the boulevards of Charleston. The light that blazed from the muzzles of those guns flashed over the American firmament with a radiance like that which flooded chaos, at the fiat of Omnipotence, on the first morning of creation. Thinking people saw it and rejoiced. It was 'the beginning of the end' of the long agony under which the nation had been sweating, as it were, great drops of blood. The war had become a necessity, which politicians were powerless either to postpone or avert. Though no abolitionist—till then—I saw it and rejoiced along with them. I thanked God—as I do now—that by an act of sublime justice, such as the pen

of inspiration had never recorded, and the genius of the drama never imagined, He had put out the eyes of the slave-owner and guided his own hands to the pillars of the temple which protected him; that He had made him drunk with arrogance, and decreed a transcendent suicide, by making himself the Nemesis—the instrument of the great work, which no merely human agencies could have accomplished. But that work would have been imperfect without more; and, by an act of justice equally sublime, He called into counsel the statesmen of the border, along with the advocates of human bondage in the North, and neutrality and conservatism stood hand in hand by the bedside of the sufferer, helping it into eternity, and mistaking all the while—like the lachrymose and lugubrious gentleman from Indiana—in the sepulchral gloom of that chamber of mortality, the unburied and offensive corpse over which they still sob, for the image of a dead or dying Union. If the border States—if Kentucky especially has suffered, as she is claimed to have done—if her dwellings have been desolated and her soil drenched with the blood of her people—she has to thank her statesmen, as we of the free States do, for all the sacrifices it has cost us to save the negro, while we were throwing away the priceless jewels of the North. If, instead of a neutrality which was only another name for treason—which the law of Solon would have denounced as the worst of crimes, and the fierce genius of Dante would have gibbeted in immortal and withering verse—if, instead of denying to the General Government, and even to her own citizens, the privilege of organizing troops upon her soil, she had but opened her arms to a deliverer, a hundred thousand Northern bayonets would have belted her round as with a wall of fire, and no hostile foot would ever have left a mark upon her soil. She chose the other part. *Neutrality* flushed slowly into the sickly and livid hue, the pale, disastrous twilight of *conservatism*, and sat upon her chest and ours until its pulses were almost hushed; and, as a consequence of all this, the bravest of her sons have died ignobly in the effort to destroy the Union of their fathers, and the most honored of her names have gone down in darkness among the nameless and undistinguished dead, and found, and now sleep in felons' graves, unknelt, uncoffined—'unwept, unhonored and unsung.'

"But what is to be the end? Who doubts it that trusts in Providence and knows that God is just? In the darkest hour of our trial, when the gallant bark that bears our fortunes had disappeared among the mountain billows that threatened to engulf it, and the lowering clouds shrouded in temporary darkness the glorious constellation of our fathers—when all mon-

archical Europe clapped its hands, and sang peans of joy as the great Republic reeled and staggered under the felon blows that were so treacherously aimed at her life by the hands of her own unnatural children—I, for one, never doubted or faltered. I knew that its timbers might be strained, and its prow dip deeply in the trough of the sea, but I read '*resurgam*' on its keel. I had a faith that it must come up again, with the old flag—that God-blessed banner of our fathers—type of regenerated humanity—symbol of hope to the nations—still flying at its peak—its only stain washed out—like the star that guided the magi over the plains of Bethlehem, to light the oppressed of the Old World to a knowledge of their rights and capabilities. If it might be permitted to the great captain, who conquered the liberties of Rome, to say to the trembling pilot, 'Why fear you? You carry Cæsar,' how much more may we—with such a freight as no vessel ever bore since the ark of the patriarch rocked upon the heaving tides of the deluge, or grounded upon the lofty summits of Arrarat—say to the trembling cowards who despair of the Republic, and even yet sit down and wring their hands like women over the impossibility of saving it, 'O ye of little faith! Up, if ye are men! A world's hopes are staked upon your manhood!' Yes, there is no throb of this great heart that does not pulsate through the nations, as they stand at gaze, looking with suspended breath, upon the swaying fortunes of this Titanic struggle. It is the great battle of the ages. It is universal humanity in its last death-wrestle with the powers of depotism. It is a narrow view of this controversy to suppose it a question of freedom to the negro only. The chain that binds four millions of black men, and as many white, both North and South, reaches not only to far-distant Africa, but grasps in its iron links the men of all climes and complexions, from the green island that hangs at the belt of Britain, to the gorges of the snow Caucasus—from the Hindoo who bathes in the Ganges, to the Kalmuck who pastures his flocks upon the steppes of Tartary.

"I trust we shall not either ignore or underrate our mission. We are in the midst of a new experiment upon the grandest theater that the world ever saw. God has so fashioned this country as to make it an indissoluble unit. What He has so joined together, all the powers of the earth and hell cannot rend asunder. The man who would consent to divide it upon any terms, is like the false mother who was willing to take the mutilated half of the child. The individual who would treat for its severance, or even send an embassy to those who insist that nothing short of this will satisfy them—if an American—is a man I cannot comprehend. I do not claim any more natural

sensibility than other men, but when the dome of this Capitol first rose before me in the spring-time of life, I looked upon it with a feeling to which no words of mine could give expression. It was not the colossal pile of masonry—it was not the Doric column—or the storied architrave—or the frescoed wall—or the tessellated floor—or any of the wonders of Grecian or Italian art, which the last few years have so multiplied around us. It was the great *thought* of the Union, embodied—it was the great *fact* of the Union, idealized in stone; it was the starry ensign that fluttered over these Halls where the nation's Representatives were assembled; it was the reflection that there—under that banner—in these seats—and hanging in these galleries—were congregated the representative men of half a continent—from the icy lakes of the North to the orange groves of Louisiana—from the men who hunted the moose on the hills of the Aroostook, to those who chased the buffalo over the great prairies of the West—men who never met elsewhere, but were here commingled in common brotherhood, in devotion to the one great idea, for the development of which this vast continent seems to have been specially reserved. Away with the jargon of art in such a presence as this! Blood, pulse, and heart confessed the power of that overmastering thought. It was a part of the education of the boy; and as I come back now, in the maturity of years, to take my seat in these Halls—enlarged and beautified as they have been—as one of the Representatives of a domain which dwarfs the empire of the Macedonian; to realize that yonder imperial bird, which stoops over your head—the sea-eagle of the Vikings—a little rapacious perhaps at times—has swept within almost a generation—with a pinion stronger than that of the eagle of the Cæsars—over a region almost as wide as any that ever owned their sway, while the establishments of the Old World have paled with affright at the rush of its mighty plumes—blood, pulse, and heart still recognize the sublime idea that was responded to by the bounding pulse of boyhood. God of our fathers! what an inheritance for humanity, and what a theater for the sublimest of its developments; and what a trust too for us who have been summoned here in the hour of the nation's agony, to witness the new birth that is to be the resurrection to a new and better life! And who is the degenerate American in this great assemblage that would even hold counsel with those that would imagine its dismemberment? Who is it that, in view of the past fate of all who have faltered in the hour of the nation's trial, and of the resistless current that is now drifting the feeble and the faint-hearted into oblivion, will be foolhardy enough to attempt to

stem that avalanche of opinion which has just swept down from the White Mountains of New Hampshire, and will strew all the other States with monuments of the public wrath in the wreck that it is making of the anti-war party of the North? Thank God! the dark hour has passed. The skirts of this mighty storm are drawing off. The fields that have been watered by its bloody shower will soon be green again. We shall come out of this war with a development of muscle and manhood, that will shame our former degeneracy and make the world tremble at our power. We shall have passed the ordeal that was to try us as a nation, when we shall have walked the burning plowshare of revolution—as we shall walk it—with our garments unsoiled, and demonstrated—as we shall demonstrate—under trials that would have shaken down the proudest monarchies of Europe, the intelligent, affectionate, and unwavering loyalty of a self-governing people, and the sublime energy and indestructible vitality of the republican idea. Our Government will be no longer an experiment, but a fact of history; and we shall resume our no longer questionable rank among the great Powers of the earth, as first among our peers—the great Republic of the Western Hemisphere, one and indivisible.

About a month before Congress adjourned on July 4th, namely, on June 2d (1864), Justice Robert C. Grier, his long-time friend, wrote him that he had received his speech.

“And what is very unusual with me,” he continued, “I read it—While it confirmed my high opinion of your talents, it failed to convince my judgment—either as to the policy of dividing the *bear's skin*, or quarreling about it before the *bear is killed*. My opinion is he *ought to be killed* & my prayer is that he *may be killed*. But I fear much that these discussions, as to the division of his skin, will tend only to make the killing of him more difficult or *possibly render it impossible*.—Your speech as *written* is the *best of the season* or that has *ever been made on the subject* with a spice perhaps *too much of spread eaglesism*. I would concur with most of the propositions and views so ably & eloquently stated. The heathen made slaves of the conquered people, as *better than* killing them. But Christians do not arrogate the sovereign power of the Almighty, to *'visit the sins of the fathers on the children to the third and fourth generation.'* I consider neither Romans nor Jews so very fit examples. David might be quoted for *saws*. Our constitution was made in a different spirit & with more enlarged views—and *without*

giving an opinion on what may become a judicial question, I think it may well be doubted, whether you will find a court sworn to obey that constitution as the *higher law*, who will carry out the wrathful views of angry politicians. You have made the best argument which *could be made* in support of Stevens' motion—better than he even made himself—Tho' a man of great ability I think him a *dangerous leader* in these most difficult times & new & difficult questions. He has ability, but is *reckless* and *injudicious*—a good lawyer, but with only sufficient conscience & subtilty to be a *party* politician, without the expanded views of a statesman or the moral instincts of a Christian.¹—The times call for the cool, *candid wisdom* of statesmen, not the revengeful passions which a demagogue may excite for a temporary popularity with factious extremists. Every day changes the standpoint from which all these difficult questions must be viewed—and a wise decision of them can only be made when *the evidence in the case is closed & both parties heard*.—I would desire to see you exercise your acknowledged talents in a way beneficial to the country, and not following en suite of any leader of faction.—The liberty I take, in this matter, of talking to you plainly is the best evidence of my high appreciation of your good sense & that you will take no offense from my remarks.

"Very respectfully & truly yours, &c.

"R. C. GRIER."²

While Mr. Williams was by no means following any party or party leader, and did not follow Stevens, as Judge Thayer has intimated, but was voicing his own matured sentiments, as a legislator who faces responsibility of action, instead of as the quiet critic of action by others, the sentiments expressed by Justice Grier represent a certain kind of public feeling which it is well to have expressed by so able a pen at this point. Whether this letter influenced the course of Mr. Williams during the next session, which closed with the second inauguration of President Lincoln and Vice-President Andrew

¹ Of course, Justice Grier is speaking of him *politically*.

² Letter among the Williams papers. Simon Cameron wrote Mr. Williams on June 3d (1864), that "the National Com. should make it a campaign document." Williams papers. Charles Sumner said of it to General Morehead that "there was more *law*, more *logic*, more *learning*, more *classic taste and elegance*, and more *statesmanship by far*" in it "than in any other that had been delivered in Congress." Conversation reported in a letter of June 12, 1864, among the Williams papers.

A bust of Mr. Williams was made by Clarke Mills at the latter's request at this time.

Johnson—the first that the Goddess of Liberty upon the dome ever witnessed¹—cannot be known. The victories of '64-65 and the shortness of the session, which closed on March 3d, for some reason led him to confine himself largely to the work of the judiciary committee during the rest of the Thirty-eighth Congress—a Congress ever famous as the one in whose existence emancipation became a law and the greatest rebellion in history was brought all but to an end.²

Scarcely forty days had passed, when in the midst of rejoicing over the end at Appomattox five days before—but a little over four years from the day at Philadelphia when he said that rather than surrender a great principle he would be assassinated—the great President fell, on the night of April 14th, in the manner intimated in the Independence Hall address, but he had upheld all the principles of both the Declaration and the Constitution. The nation from end to end was torn, in their rejoicings, with mingled feelings of grief and hot indignation which had much to do with the course of the next Congress. At Pittsburgh a public meeting was arranged, as was done in nearly all other places in the Union, for a funeral address, and by common consent Mr. Williams was acknowledged to be the fitting orator for the occasion. The people assembled at Christ Methodist Episcopal Church, in Penn Street, on Thursday, June 1st, and he again delivered a eulogy over a second President to fall before the echoes of his inaugural were scarcely silent over the land.³

“We meet in gloom,” he began. “But yesterday our streets were jubilant, and the very heavens ablaze with the bright pomp of a rejoicing multitude. But yesterday our temples were vocal with songs of rapturous thanksgiving for the great victories that

¹ Speaker Colfax's closing address, *Congressional Globe*, Thirty-eighth Congress, 2d Session, Part 2, p. 1424. The statue was finally placed in position December 2, 1863. It is a curious fact that it would have been crowned by a Liberty cap, instead of eagle's feathers, had not Jefferson Davis, Secretary of War, when the point came up, objected that it might look as if this image of Americans might once have been enslaved. Todd's "Story of the City of Washington," p. 297. It may be recalled, also, that it was only in 1857 that the House of Representatives left their old-time home, the present Hall of Statuary, for the one they have since occupied.

² In a letter of March 13, 1865, Mr. Williams tells of a trip to the front and pleasant experiences as a guest of Generals Grant and Meade.

³ Copies among the Williams papers.



PRESIDENT ABRAHAM LINCOLN

Halftone of a contemporary photograph by Brady, negative in possession of
L. C. Handy, Washington, D. C.

had been vouchsafed to our arms. To-day no jubilee solicits us. No loud huzzas—no 'aves vehement'—no hurrying feet—no hymns of triumph salute our ears. It is the hour of darkness, as these sad emblems indicate. A nation mourns. A mighty people throngs its wide-spread sanctuaries, to lament its martyred Chief, but just returned from the overthrow of the armed array that menaced its own life, to die in the very hour of his triumph—in the fancied security of its own capital—under the blaze of a thousand lights, and a thousand admiring eyes—and in the midst of the brave hearts that belted him around, and would have spilled their life's best blood to shelter him from harm—and to die, oh God of Justice! by the stealthy and felonious blow of an assassin. In such a presence, and with such surroundings, the chosen Ruler of this great Republic—the kind, the generous, the parental magistrate, who knew no resentments, and had never done aught to deserve an enemy—has bowed his venerable head upon his bosom, and laid down the high commission with which he had been so lately reinvested by the popular acclaim. 'Most sacrilegious murder hath broke ope the temple of the Lord's anointed, and stolen out the life of the building.' The pulse of the world has stood almost suspended by the earthquake jar that shook its continents and isles, as no event of modern times has done. A multitudinous people—'in numbers numberless' almost as the stars of heaven—thrilled with horror, and smitten dumb by the fearful atrocity which flashed upon them, unheralded by any note of warning, over the electric wires, have uncovered their heads and wept, as no people ever wept before, as the funeral cortege swept by, with its precious but unconscious burthen, over mountain and plain, and along the rivers and the lakes, in its long and melancholy journey to the far Western home which he was to see in the body no more. The earth has opened to receive all that the nation could give back to that now desolated home, and we are here to-day, by the appointment of his successor, to bow in reverential submission and acknowledgment before the Hand that has smitten us, and to draw such consolations as are possible, from the consideration that the chastisements of God are sometimes mercies in disguise, while we water with our tears the fresh grave of the heroic martyr, who has crowned his great work by the offering of his own life upon the same altar where the blood of so many victims had already smoked to heaven.

"Yes! ABRAHAM LINCOLN is no more. All that could die of him who has defended and rebuilt the tottering structure of our fathers, has passed from earthly view, by a transition as abrupt as his who laid the foundations of the Eternal City, and

then, according to the legendary epic of the Roman State, was wrapt from mortal vision in a chariot of fire. The shadow of the destroyer has mounted behind the trooper, and the grim spectre of the grisly king followed close upon the pageant of the avenue. The wise and prudent ruler who was commissioned of God to lead this people through the fiery trials from which they have just emerged—the chief who had just been lifted on their bucklers for a second time to the supreme command—the idol of the popular heart, who had so recently been crowned anew at the Capitol with the symbols of a nation's power, the insignia of a nation's trust, and the rewards of a nation's gratitude, amidst the thundering salvos of artillery, and the responsive voices of an innumerable throng, has ceased to listen to the applauding shout, and passed from the regards of men, into the serene light of an abode beyond the stars, where the banner of war is furled, and the hoarse summons of the trumpet, and the roll of the stirring drum, no longer awaken either to the battle or the triumph.

"On two occasions only in our brief but eventful history, the hand of death has fallen upon the head of this great Republic. On both, however, it descended in a period of public tranquility, by the quiet and gentle ministration of nature, without shock and without disturbance. The fruit fell when it was ripe, and the nation grieved, but not as those who are without hope. It paused but for a moment to cast its tribute of affection on the tomb, and then hurried onward in its high and prosperous career. For the first time now, in the very hurricane of civil strife, a bloody tragedy, of fearful aspect, and more than mediæval horror, forestalling the dissolving processes that are interwoven with the law of life, has snatched away the man who, above all others, was most dear to us, almost in the twinkling of an eye, in high health, and in the very crisis of his great work, when the regards of the world were most intently fixed upon him, and the destinies of a nation were trembling in his hands. It is as though an apparition had stalked, in the midst of our rejoicings, into the very presence of the festal board, and it is under the projecting shadow with which that ghastly shape has darkened the whole land as with a general eclipse, that I am asked to discourse to you of the merits and services of the extraordinary man, who has thus disappeared from amongst us after having enacted so large a part in the greatest and most important era of the world's history. It is a task which is never easy in the performance, and cannot be faithfully executed until the lapse of years shall withdraw the observer from a proximity that is always unfavorable to the clearest

vision, and the work is consigned to the pen of impartial history. It is one, however, which I have not felt at liberty to decline.

"Of Abraham Lincoln there is little to be said, until the voice of the people called him from the comparative obscurity of a provincial town in the remote West, to preside over the destinies of this Republic. The story of his life, antecedent to his appearance on that broader stage, where he was destined to command more of the observation of the world than any other man either of ancient or modern times, is soon told. Born in a frontier settlement in Kentucky, of humble parentage, and with no prospective inheritance but that of the coarsest toil, it was not his hard fate to wear out his life in the hopeless struggle for success, to which that nativity would have consigned him. At the age of six years, his parents, warned by no vision, but by the stern necessities of life, removed from the house of bondage, taking the young child with them, to grow up in the freer air of that great Territory, whose fundamental ordinance had insured the respectability of labor, by forbidding any bondsman from ever setting his foot upon its soil. There, in the vigorous young State of Indiana, without even the aid of a mother's care beyond his infant years, he shot up—we know not how—into the lofty stature and robust manhood which have since become so familiar to us all, diversifying his labors, and indulging that spirit of adventure that is so common to the pioneer, by embarking, at the age of nineteen years, as a working hand, at the scanty wages of ten dollars a month, on one of those primitive flat-boats on which the western farmer of those times was wont to launch his produce on the bosom of the Ohio, to find its only market at New Orleans. At the age of twenty-one years, without any better prospects in life, and inheriting apparently the migratory instincts of his father, who had perhaps grown weary of his Indiana home, he plunged with him into the further West, and sought and found a new settlement on an unreclaimed quarter-section of the public lands in Central Illinois. That he must have shared the humble labors of that parent in winning his new acquisition from a state of nature into a habitable abode for man, is obvious from the fact that so limited an area, on the extremest frontier of civilization, could have afforded no great scope for employment but with the axe or plow, and no means whatever for mental culture or development, except those powers of thought and observation, which the solitudes of nature, and the communion of the forest and the field, have sometimes awakened in those gifted spirits that seem to be immediately inspired of God. Within a

year or two, however, the occurrence of what was called the 'Black Hawk War,' drew him from a seclusion which must have been extremely irksome to a youth of lively temperament, and overflowing health, by offering the temptation which the pursuit of arms almost invariably presents to the young and ambitious spirits of the land. He enlisted in a company of volunteers, who forthwith selected him as their captain, but his aspirations for military renown were soon cut short by the unexpected termination of the war. His next appearance is as a candidate for the Legislature of the State, to which he was repeatedly elected, and about the same time he turned his attention to the study of the law, and was duly admitted to the Bar. What preparation he may have made for this transition to another and a higher field of labor, is unknown to us. He has the credit of confessing, with that simplicity which drew from him the acknowledgment that he had never read the works of the great master of the drama, that he had enjoyed the advantage of but six months' schooling in the whole course of his life. That he had read such books as were accessible to him, is not to be doubted. Report says that he had picked up in some way a little knowledge of surveying, which may have served to train and discipline his reasoning faculty, and was, as will be remembered, the youthful employment of the great Washington himself. Beyond this, however, little was required in the infant condition of a frontier settlement, which would have few attractions for men of such acquirements as only an old community could afford; although it is not to be questioned that some of the robustest intellects in the land have been nurtured in those primitive and truly republican schools, where no hot-bed culture was admissible, and every sickly plant was doomed to die. Whether he succeeded in attaining any great distinction in his new profession, where success is dependent generally on a peculiarity of taste or mental structure, and where industry is so often an over-match for talent, is by no means clear. We do know, however, that his abilities and worth were duly recognized at home by his triumphant election in 1846 to the Congress of the United States—where he served, however, but for a single term—as well as by the award to him, by common consent, of the championship of the Free State party, on the occasion of the controversy which grew out of the Kansas-Nebraska Bill. In 1856 he was presented by his State, and supported largely, as a candidate for the office of Vice President on the Republican ticket of that year; and in the canvass of 1858, as the accepted candidate for Senator, he discussed before the people of Illinois the question of the extension of slavery into

the Territories, in a series of debates which riveted the attention of the nation, by the clearness of their statements, and the immense logical power which they displayed. It was perhaps to the publicity of these efforts that he was mainly indebted for the great distinction conferred on him by the Convention of 1860, in singling him out, above all competitors, as the standard-bearer of the army of freedom in that memorable campaign.

"And this brief narrative—compiled from unauthentic sources, and making no pretension to the accuracy of biography—is a summary of his career until called by Providence to enact a part that has been assigned to few men in history. How he performed his duty is perhaps best evidenced by the difficulties he had to meet, and the final result of the war which pervaded his whole administration. He bargained only for a peaceful rule, like that of his predecessors. If he could have foreseen the magnitude of the task that was before him, he might well have shrunk from the trial. He would have been a bold man, who, with such fore-knowledge, would willingly have taken the helm in such a storm as howled around him on his advent, and strained the timbers of the ship of state for so many long and weary years. To him the place, however exalted and honorable, was one of anxious and unsleeping care. No man can tell how much of agony it cost a heart like his. It is to that point of his career, however, that our inquiries are to be directed, if we would know the man. The history of the great rebellion, comprehending all or nearly all of his public life, is emphatically *his* history. It began and ended with his administration of the government. He succeeded to a divided sceptre. He lived just long enough to re-unite the broken fragments—to re-plant the starry banner of our fathers on the battlements whence treason had expelled it—to see the arch-apostate who had seduced a third part of the States from their allegiance, a wanderer and a fugitive—and to leave to his successor a once more undivided Union.

"With this slender preparation, however, and with no previous training in the mysteries of government, he was translated to the Federal capital in the most eventful crisis of our history, to take upon his shoulders such a burthen of responsibility as no President had ever been called upon to bear. The assassin lurked upon his path. Already the Southern horizon was red with the fires of incipient rebellion. Already State after State, encouraged either by the premeditated treason, or the helpless pusillanimity of the miserable imbecile who stood pale and trembling at the capital, had shot madly from its orbit. The strongholds of the Union, constructed at great expense for the

protection of the South, had been either seized by violence, or basely surrendered by their garrisons. The seat of our National Government was reeking with disloyalty. While treason was the badge of respectability there, Republicanism was tabooed as something that was only vulgar and vile. The Bureaus of the several Departments were swarming with malignants, who were looking anxiously in the direction of the South for an irruption of the rebel hordes, and ready to surrender the keys of their offices on the first summons of the public enemy. There was no direction in which the President could turn for support, in the contingency of any concerted movement to prevent his inauguration. The army, inconsiderable in itself, had been detached to distant cantonments, where it could afford no aid, and was sure to become an easy prey. Its officers—the *élèves* of our military school—the most of Southern birth, but some of Northern origin, debauched by their associations, or with naturally slavish instincts and unbounded admiration for Southern institutions and Southern men, were generally disaffected to the Union, whose bread they ate, and whose flag they were sworn to defend. Not a ship of war was to be found upon our coast; not a soldier at the capital to defend the person of the Chief Magistrate of the country, except, perhaps, a slender escort, of more than doubtful loyalty, improvised for the occasion by the Lieutenant General, upon the urgent importunity of men who realized the danger of a *coup d'état*, as the new President himself did not. There was nothing, in fact, but the mere prestige of the office, the habitual respect for the person of the Chief Magistrate, and the probable re-action that would ensue upon any demonstration of violence, and, above all, the well-understood determination of the thousands of brave men who were assembled there from the free States, secretly armed and ready for such an emergency, to prevent or punish any attempt that might be made on the life of the President. And yet he did not shrink from the ordeal, but there, on the steps of the capitol, under the blazing sunlight, in the presence of all that innumerable concourse, and in the hearing of a listening world, in terms of kindness, and not of menace, but with a seriousness and solemnity that were not to be mistaken, he proclaimed his firm and unalterable determination to employ all the powers vested in him by the Constitution in maintaining the integrity and inviolability of the Union, from sea to sea, and from the lakes to the gulf, and restoring to its authority every State and fortress that had been wrested from it by the hands of treason. Rebellion, already organized and armed, and confident of its superior prowess, received the announcement with

derisive laughter, as but an idle vaunt on the part of a President who was without a soldier or a ship to batter down the very feeblest of its strongholds. *He* knew that there was an army in the fields and workshops of the North, which only awaited his call to do this work. A million of stalwart men sprung to their arms upon his summons, and the pledge was redeemed. The boastful chivalry went down before the sturdy arms and stormy valor of the men they had so foolishly despised; and where are they now who laughed to scorn the admonitions of that day, and arrogantly proclaimed to their deluded followers that the capital of the nation, and the rich spoils of the opulent and crowded cities of the North, should be given to their victorious arms? They have found only a grave, where they meditated an easy conquest. But Abraham Lincoln lived to see his pledge fulfilled. His work was done, and he too sleeps with his fathers. It had cost many priceless lives to do that work. It was to be consummated by the sacrifice of his own—the most priceless, perhaps, of all. The demon which he exorcised was to collect all his remaining strength into one expiring blow at the head of his destroyer, as he fled howling, and in despair, from the seat of his long cherished but now forever lost dominion upon earth. The final catastrophe was in precise keeping with the whole spirit of the bloody drama which it concluded. Beginning in treason, with perjury, and robbery, and starvation, and murder, as its handmaids, it could not have ended more fittingly than in the cruel, and cowardly, and revengeful assassination of the heroic leader who had stricken down the sacrilegious hand that was lifted against the nation's life. Miserable and short-sighted revenge! The blow which prostrated our honored chief, while it made no interregnum, and paralyzed no nerve of the government, has been his apotheosis. The hand of the assassin is already cold. A swift retribution has overtaken the miscreant who was put upon this work, while the hands of justice are already laid upon the highest of its guilty authors, and the avenger of blood is tracking his accomplices to their last retreat. But they, too, will not altogether die. The obscurity that they might well pray for, is not for such as them. There can be no oblivion for such a parricide. The flash of that fatal pistol in the theatre at Washington, which sent its leaden contents crashing through the brain of our honored magistrate, will blaze around them like the gleam of the assassins' daggers that sought the great hearts of Henry of Navarre and the heroic Prince of Orange, and light their memories down, from age to age, through the long corridors of history.

"It was a disadvantage, too, of no small moment to an untried man, to find himself surrounded by counselors of fair repute, who had either nothing to propose, or doubted the power or rightfulness of coercion in a government like this, or thought that even separation itself was better than war, or hoped to patch up an ignoble truce, by compromising the questions in dispute, and furnishing additional and perpetual guarantees to the insatiable interest which had come to despise even the privilege of ruling this nation, as it had done before. It will scarcely be believed in future times, how many there were, enjoying the reputations of statesmen, who were committed to one or other of these opinions. But while the question hung suspended between these conflicting views, although every concession had been proposed, and every effort toward compromise had failed, and while the nation was sweating in mortal agony with seven States defying its authority, and formidable batteries rising from day to day under the shadow of our own guns, around our fortresses in Charleston harbor, the knot was happily untied by the impatient hands of the conspirators themselves. To secure the co-operation of the States that still stood hesitating, it was deemed necessary 'to fire the Southern heart' by some stupendous act of violence, that should dig an impassable gulf between them and us; and their guns were accordingly trained, amid the sounds of revelry and the exultant huzzas of an intoxicated populace, upon the old flag that was still floating over the feeble garrison of Sumter. It was a gay tourney for fair ladies and gallant knights—an easy victory, but a short lived triumph. The walls of Sumter crumbled under the terrific storm that burst upon them from the hundred iron throats that girdled them around as with a cataract of fire, and its garrison succumbed. But the echoes of those guns lighted up a flame in the colder North, that melted down all party ties with more than furnace heat, and was only to be extinguished in the blood of the fools and madmen who had been taught by their Northern auxiliaries to look for no such answer to their defiant challenge. The President could hesitate no longer. Menace and insult had had developed into open war, and the time had now come to redeem the pledge that he had made, by summoning the freemen of America to defend their flag. He called, and such an answer was returned as no people had ever before given to the summons of its chief. From town and country, from the lumbermen of the pine woods of the Madawaska to the trappers of the upper Missouri, and the gold hunters of the more distant Sierras, as the reverberations of that trumpet-blast leaped from mountain to mountain, and pealed over the great plains and

along the mighty rivers of the land, the old, the middle-aged, and the young, with one common impulse, and without distinction of party or of creed, with but a hurried farewell to wife, and children, and home, were seen thronging the iron highways to their respective capitals, and begging for the privilege of enrolling themselves among the defenders of their country, and dying, if need be, under the shadow of its flag. It was no monarch's battle. It was their own honored and glorious banner, the symbol alike of their power and their privileges, that had been insulted and defied. Away with the idea of caution and slow resolve, when such huge interests are at stake. That is for diplomatists and strategists. Men do not stop to calculate the odds, the chances, or the dangers, when it is a question of resenting contumely, or defending the object of their love. They did not wait to be schooled to a sense of their interests, or duties, or the necessities of the times, any more than to the knowledge of the use of arms. To affirm, as has not been unusual in high places, that they require to be educated by their rulers up to the level of such an occasion, is to ignore the whole experience of that memorable day, whose manifestations took the doubting by surprise, and so utterly confounded all the calculations of the few amongst ourselves who looked for, and had promised a divided North. The call itself was but a response to the popular desire, which had anticipated it. The answer was an assurance to the Government that it would be sustained in every measure of severity that the crisis might demand.

"But it was a still greater disadvantage to the new Executive, that the full import of this rebellion was not even comprehended by many of those to whom he was expected to look for advice, in a crisis where the ordinary responsibilities of the office were so much enlarged. Although its causes, its history, and its objects were obviously such as to render a compromise impossible—although the leaders of the revolt had voluntarily abdicated their places in the government, and gone out from us, when they might have dictated their own terms—and although they had contemptuously spurned every overture for negotiation, and affected no concealment of their deep-seated and implacable hatred not only of ourselves, but of our very form of government—there were still sanguine and credulous men in eminent positions, who believed that the rebellion could be suppressed in ninety days—not by war, but by diplomacy—not by striking at its causes, but by ignoring them—not by punishing its authors, but by indulging them—not by a change of measures, but by a persistence in the very policy that had brought it on.

In the view of men like these, every forward step was fraught with danger. Even the simple and obvious proposition to repeal the law that made the capital of a free nation the home and market of the slave, and the fruitful nursery of the rebellion itself, was represented as so full of mischief, at such a time, that the President himself was almost staggered by the shadowy forms of terror that were evoked to stay his hand. If he had yielded to them, we should not have reached the great measure of the proclamation for at least another year, if ever. It met the same resistance as the other, but the practical good sense of the President, backed up and fortified by the high courage and unanswerable logic of at least one member of his Cabinet, at length overmastered all these influences, and the great charter of the black man was produced before them as a measure upon which he had already privately determined, upon his own responsibility to the nation. It is due to the just fame of Abraham Lincoln, that the world, instead of dividing the honor of the act with other possible claimants in future times, should know how little he was aided in the task—how much of opposition he was called upon to meet—and how much of moral heroism that act involved. It was no trifling disadvantage, certainly, to a new and unpracticed statesman, in a position of such unusual responsibility, to be surrounded with men of weak nerves, who had not the courage to face the exigency which their own counsels had precipitated. The occasion called for intrepid statesmen, as well as generals, who, with a just confidence in the people, instead of stopping to calculate the possible odds, and betraying a hesitation that at least resembled fear, and thereby throwing away all the advantages which the possession of the government gave them, would have struck at once, and with lightning-like rapidity, at the very heart of the rebellion. The sublime response which the people had already made, was an assurance that they could be trusted. It was a sore trial, too, for them to see their fiery legions condemned to stagnate in inglorious repose, until, in some instances, their terms of service were about expiring, while their very capital was beleaguered by an insolent banditti, whom they could have swept like chaff before them. No government in the world could have survived it but our own, and it is no marvel, therefore, that some of the most enlightened statesmen of Europe, educated in the traditional notion that the democratic idea was a delusion, and that a government like ours, though formidable in external war, was helpless for self-conservation, and must fall a prey to the first intestine convulsion, and reasoning from the abject condition and low intelligence of the people around them, should have

hurried to recognize the rebels as belligerents, and staked their reputations on the opinion that the great American Republic, the wonder and terror of the world, and the standing reproach of all its monarchies, was rent irreparably in twain. I do not speak of this now as a thing to be regretted. It seems as though, in the providence of God, it had been intended not only to cleanse this land of its great sin, but to confound the unbelievers in the high capabilities and lofty destinies of our race, by passing us through the fiercest fire, and contriving every possible test—even to the final catastrophe of the assassination of our Federal Head—to establish the great fact of the ability of man to govern himself, and to dispense, under all circumstances, with the machinery of hereditary rule. A different policy, by rendering the task an easier and a speedier one, would have left the world and ourselves much to learn of our resources and capabilities, and much of the barbarism of that institution which it would have left substantially intact, to breed new rebellions, and exact new sacrifices from our posterity.

"It was under these influences, strengthened as they were by an apprehension not apparently removed by the enthusiasm with which they responded to the call of the President, that the people were not yet up to the real level of the crisis, and not prepared for the adoption of such earnest measures of repression as a state of war demanded, that the armies of the Union were brought into the field. It was not for the Chief Magistrate, of course, to direct their operations in person. But his generals were unfortunately either men of Southern birth, or men who had been educated in a feeling of profound reverence for Southern institutions. With them it was almost profanation to invade the sacred soil of a sovereign State. With them the treason of their ancient comrades, if not a chivalrous virtue, was only the infirmity of a noble mind. Perjury and ingratitude the blackest and most damning—rebellion and treachery the most wanton and unprovoked—implied no stain upon the personal honor of their enemy. Longstreet and Jackson were models of Christian virtue—Lee and Beauregard unblemished specimens of elegant and well-bred gentlemen—every ingrate especially, who had betrayed the Government that reared him, an *honorable* man. No 'kind regard' was forfeited by their base defection; no hand refused in friendly greeting, though red with a brother's blood; no fervent 'God bless you,' left unuttered because the recipient had blackened his soul with the foulest and basest crime that history records. To have opened their camps to a loyal negro, would have been a violation of the constitutional rights of his rebel master. Knightly courtesy required his

return. To have harkened to the evidence he brought of the strength and position of the enemy, would have been a violation of the rule which disqualified him as a witness against his master. Rebel exaggerations for purposes of effect, were more acceptable than the simple, unvarnished truth from the lips of a runaway contraband. What success was to be hoped for, with such instruments? The President himself both saw and felt the difficulty. His patience was severely tried, but what was he to do? If he ordered a movement in advance, the weather was either too cold or too hot—the mud was axle-deep or the dust intolerable. If made, it was done reluctantly, or with a protest, and the responsibility of a failure was with him. If refused, and he threatened to displace the officer, it was perhaps suggested to him, that the army or the people would revolt, while they were actually chafing with impatience—the rebellion growing in strength—and the friends of the Government beginning to despair. In this dilemma, it became necessary for him to take up the question of an entire change of policy. The struggle was a long and painful one. If he had felt at liberty to consult the promptings of his own mind and heart, in a case where the life of a nation was depending on his decision, it would have ended as soon as it was begun. But his habitual caution, intensified by a just sense of his great responsibility as an officer, held his judgment in abeyance. His own good sense, however, triumphed at the last. Unaided but by the counsels of a faithful few, he took up the case, calculated all the elements that entered into it, and arrived, by a strictly logical process, of which the steps are now obvious, at the conclusion that the rebellion could only be conquered by the emancipation of the slave. He put that result in the shape of a Proclamation, and then summoned his Cabinet together, not to *advise*, but to *hear* what he had determined. The picture of the *consultation* over this important document, is the merest fancy-piece. The point was decided by him before they met, and there was no demur, because there was no further room for objection.

"Nothing, however, is clearer than the fact that it was not the original purpose of Mr. Lincoln to interfere with slavery in the States. With all his strong convictions that it was a crime—that, in his own terse language, 'if slavery was not wrong, there was nothing wrong'—his respect for the constitutional rights of the South was such as to over-ride his own private sympathies for the bondsman. With him, the leading, over-ruling thought—the idea nearest to his heart—was the preservation of our glorious Union, as God's chosen instrument on earth, and the one best fitted, with all its defects, to secure the peace and happi-

ness of man. The other question was entirely subordinate to this. He was willing—to quote from him again—to save the Union, *with* slavery if he could, or *without* it, if he could.' His first idea, encouraged, if not inspired by the men who had then his confidence, was, that it could only be saved by tenderness to that interest, whose extreme sensibility to danger—to say no worse of it—had brought all these troubles—these almost apocalyptic woes upon the land. Under these impressions, the war was waged for eighteen months, in such a way as to do as little harm as possible to that institution in the hope that the rebels might be conciliated—as they had never been before—by the forbearance of the Government. It was only the current of events—the failure of this policy—the fuel furnished by the great expense, the tardy progress, and the inadequate results of the war, to the growing discontent of the friends of the Government in the North—and the conviction that the policy of saving the Union *with* slavery must give way to the opposite policy, if it was to be saved at all—that drifted him into the position assumed for the first time in the Proclamation, and maintained with unwavering constancy until the last hour of his life. That he should ever have been persuaded to believe it possible to conciliate the men who had voluntarily abdicated their places in the government, only because it was obvious that they could no longer hope to rule it permanently, is to be set down more to the account of his habitual caution, his strong conservative temperament, his deference to older heads, and his desire to give full scope to an experiment of an apparently innocuous character, enforced by the counsels of almost every man around him, than to the convictions of his own unbiased judgment. The case was one of conflicting systems and ideas, that might admit of a *truce*, but of no compromise. It would have been but an adjournment of the question until the antagonistic forces had taken breath for a fresh struggle, while the rebel element was strengthening itself in the meanwhile for new aggressions. The enforced connection between Liberty and Slavery was worse than incestuous. God and nature had decreed an eternal divorce between them. Our fathers, it is true, had made the experiment of reconciling these hostile elements—not, however, under the modern hallucination that they would permanently combine, or coalesce, but only to keep the peace between them, until the weaker should disappear. The President had apprehended this, when he declared that this government could not be 'half *free* and half *slave*.' Mr. Seward himself had comprehended it, when he characterized the war between the two systems as 'an irrepressible conflict.' As well attempt to blend darkness with light.

The intermingled elements would produce only a disastrous twilight with perpetual jars, or, as the one or other interest predominated, either deepen into the chaotic gloom where the lost spirits are supposed to dwell, or flush into the rosy light of liberty. The Union could not have been saved *with* slavery, any more than a man could be made immortal with the seeds of death in his constitution. The inherent vices of the system were sure to bring about a conflict at last, by engendering and fostering the spirit that inaugurated it here, as they were equally sure to give to the contest itself a character of fierceness and atrocity which has appertained to no modern war. It was but a new phase of the old quarrel—as old as government itself—which has shaken the kingdoms and hierarchies of the world, and was destined to be fought out here, upon a wider arena than any that the Old World could offer. If it was not comprehended, however, by ourselves, the governing classes in Europe, and the advocates of unlimited power everywhere, had not failed to understand it from the beginning.

“The proclamation of freedom was the first decisive measure of the war. It inaugurated a new era, and proclaimed the purpose of the Government to wrest from the rebels their most effective weapon, if not to turn it against their own bosoms. The menace of it was at first derided as a mere *brutum fulmen*, by those who knew what was to be its effect, and dreaded it accordingly. As soon as it became obvious that this mode of attack was about to fail, the policy of the auxiliary rebel presses of the North was changed. Dire were their denunciations then of a measure represented to be fraught with woe to helpless womanhood and feeble infancy, and big with the unutterable horrors of a servile war. Its promulgation was soon after followed by the elections of 1862, whose unfavorable results—attributable only to the public weariness of the inaction of our armies—were adroitly placed to the account of this threatened measure. By those who did not understand the temper of the President, or the process of reasoning by which he had reached that point, it was greatly feared that he would falter, when the hour of trial came. But alike regardless of the gloomy auguries of the timid, and the storm of obloquy and denunciation that burst upon him from the sympathizers with the rebellion here, he stood unmoved, and the bolt sped at the appointed hour, and shook the rebel capital to its foundations, as it lodged in the very heart of the Confederacy. Dismay sat on every face at Richmond. If a shell had exploded in that pandemonium, where those dark conspirators against the rights of man were then assembled, a greater consternation could not have followed. In

the midst of 'a universal hubbub wild, of stunning sounds, and voices all confused,' like that of chaos, which 'assailed the ear with loudest vehemence,' a dozen members were on their feet at once, with retaliatory propositions of the wildest and most atrocious character. But if there was gloom there, there was joy elsewhere. The great heart of humanity dilated at the tidings. The wearied soldier stretched by his camp-fire, and joined till then in unequal battle, was lifted up and comforted. Four millions of bondsmen raised their unfettered hands to Heaven to call down blessings on the head of the deliverer who had broken their chains. The patriot felt that the arm of the country was strengthened at home and abroad by the act that had at last vindicated the solemn truths of our immortal Declaration, and placed our Government once more in harmony with its own fundamental principles. Instead of any further necessity of humbling ourselves, by holding out to foreign powers a menace of emancipation, as the signal for a servile war, in order to deter them from an intervention which they never would have ventured on—and never could, without the risk of ruin to themselves—it was no longer possible for any Christian nation to take sides against us. It was the turning point of our great struggle, and the death warrant of the rebellion itself. And it was just because they felt and knew it, that it roused among its ruling spirits all the devilish passions that flamed out most fiercely during the latter period of the war. It foreshadowed the appearance of the black man himself, at no distant day, with the harness of the Union on his back, as a combatant in the arena on the side of liberty. From that day forward, with only the occasional vicissitudes to which all wars are subject, the banner of the Republic, with its new blazonry of Freedom, never drooped or went backward in battle. God was on our side. The holiday generals, great on the parade—the strategic imbeciles—the half-hearted martinets—who were more solicitous to protect the chattel than to punish the treason of the master, gave place to a race of earnest men—heroes of the Cromwellian type—who felt the inspiration of their work, and with a faith that no reverses could shake, and no disaster disturb, were ever ready to second or anticipate the fiery ardor of their legions, by giving a full rein to the spirit that had chafed and fretted under inglorious restraint, whether it was to plunge into the fastnesses of the Rapidan, to scale the Alpine passes of the Tennessee, or to sweep with resistless force across the sunny plains of Georgia. The rebellion was doomed, and the baleful star that had rushed up with the velocity of a meteor into the forehead of the sky, and shed its portentous glare for a moment upon the nations,

plunged down again into eternal night, to be remembered hereafter only as one of those scourges of humanity, that are sometimes let loose upon the earth for high and inscrutable purposes.

"But it is not for me to follow the history of this long and bloody struggle through all its varying fortunes to the period of its final consummation. That is a task which belongs to the historian. It has some points of interest, however, that are not unworthy of commemoration, and not unsuited to the occasion that has brought us here.

"The scene that has just passed before our vision, was such as has been presented to no other generation of men. Few of us have perhaps fully realized the importance of the part that has been assigned to us in history. The records of our race have nothing to offer so grand and imposing as this bloody conflict, in its magnitude, its causes, its theatre, and its details. A peaceful nation, schooled only in the arts of quiet industry, entirely unfamiliar with the use of arms, holding itself aloof from the political complications of the old world, and but thinly diffused over half a continent—imagining no evil, and fearing none from others—is suddenly startled from its repose by the blare of the trumpet, and the roll of the martial drum, and summoned to the defense of its institutions, its liberties, its very life, against a wicked conspiracy, organized in its own bosom for the purpose of destroying it. It not only responds to the call, but astonishes the world by an exhibition of unanimity, and zeal, and high religious fervor, which have had no example since the era of the Crusades. In utter forgetfulness of self, of danger, and of the comforts and endearments of home, it covers the earth with its living tides, as it rushes to the rescue of the object of love. Over a region almost as wide as the united kingdoms of Europe, a million of brave hearts are marshaled in armed array, with implements of destruction such as no age hath seen. Along the Atlantic coast, across the great rivers, and the boundless prairies of the mighty West, over the swamps and savannas of the distant South, through forest, brake and wilderness, through bayou and morass, over rugged mountains, and along the cultivated plains that laugh with the abundance with which industry has covered them—the earth shakes with the tread of embattled hosts, while bay and gulf swarm with innumerable prows, and the shores against which the tides of two oceans break, are belted around with those leviathans of the deep, which bear our thunders, and are destined hereafter to proclaim our power in the remotest seas. It is the battle of the Titans, with fitting accessories, with lists scarce less ample, with enginery as complete, and upon a theatre almost as stupendous,

as that which the genius of Milton has assigned to the armies of angel and archangel joined in battle for the supremacy of Heaven. The Old World, till now ignorant of the power that had been sleeping here, stands amazed at an exhibition which its united kingdoms would in vain essay to match. It comprehends at once the whole significance of the struggle. It is the world's battle—the same that has been fought so often with other watch-words, and on other fields—the old conflict between antagonistic social forms—between the people and the kings—between the privileges of caste and the Republican idea of equality. It feels that the interest of all its ancient, and hoary, and moss-grown establishments—its thrones and hierarchies alike—resting on the prescription of a thousand years, and harrassed by the still older traditional idea, that man is unfit to govern himself, are staked on the issue of this contest. It sees, or thinks it sees, in the martial array of the disciplined legions of the Confederacy, inflated with pride, and sneering at the base-born hinds and greasy mechanics of the Free States, the impersonation of the mailed chivalry who rode down the miserable acquerie of France five hundred years ago. Forgetful of its treaties of commerce and amity—oblivious even of its own apparent interests, in the maintenance of due authority and subordination between government and subject—ignoring alike the usages, and customs, and comity of nations—it does not find patience even to await the issue of a battle. The disruption of this great Republic—the standing reproach and menace of royalty in all its forms—is assumed as a fact accomplished, upon this mistaken view, and the additional postulate of its statesmen, that a structure like our own, however prosperous or formidable against external violence, is without the power of self-preservation, and must inevitably perish on the first internal convulsion. It does not even stop to inquire into the special provocations, if any, for this wanton and wicked rebellion against authority and humanity. Professing to make war against the slave trade, denouncing it as piracy, and employing fleets for its suppression, it does not even revolt at the unexampled, and atrocious, and anti-christian idea of a government, boldly and shamelessly declaring its only purpose to be the perpetuation of human bondage—an organized piracy, and a systematic attack upon the rights of man. In its anxiety to aid the cause on which its own institutions are depending, it hurries with an indecent precipitancy into the recognition of a belligerency, that will enable it to serve the interest in which it dares not venture openly to draw its sword, by throwing wide its ports to the privateers of the enemy, and

fitting out its own cruisers to prey upon our commerce on the seas. Its governmental press, aided by its hireling scribblers here, is prostituted to the base employment of showing the inevitable failure of our great experiment, by maligning our brave defenders, and libeling our sainted President. Its Ministers at our own capital, prompted by the same instincts, and sympathizing openly with our enemies, and equally ignorant of the people to whom they are accredited, advise their sovereigns, and are allowed to proclaim here openly without rebuke, that our career as a nation is at an end; and inwardly rejoice with them, that a power declared by themselves to be too formidable for the world's peace, and too formidable to be safely met either upon the sea or upon the land, by their united strength, has perished miserably by intestine strife—the supposed inherent and unavoidable disease of the republics of all times.

“How great has been its error! How disappointed all its flattering prognostications! How utterly has all its boasted wisdom been confounded by events! How deeply does it now tremble in the presence of the great fact, which it is yet reluctant to acknowledge, that this nation, with all the sympathies of the governments of the world against it, has proved its indestructibility, by a trial which no European State could have outlived! But how inexpressibly grand and sublime—what a spectacle for men and angels, has been the attitude of this people throughout the fiery trials of these four eventful years! What a theme for an epic such as Milton or Tasso might have written—the great Republic of the Western Hemisphere—the world's last champion—charged with the loftiest interests that ever were committed to the guardianship of man—belted around by enemies, open and secret, who were thirsting for its destruction—torn by intestine strife, and bleeding at every pore—without the sympathy of any one of the ruling powers of earth, and with no help but the prayers of the faithful few in all lands, who looked upon its star as the last hope of the oppressed—standing alone, like a solitary rock in the ocean, with the tempests howling wildly around it, but flinging off the angry surges which dash and break against its sides, and bearing aloft with intrepid and unfaltering hand, amid the wild uproar of elemental war, the broad ensign of our Fathers—the pledge of freedom to universal man! If the enemies of liberty now tremble in our presence, it is not more from the dread of a resentment, which they feel to have been justly merited, than from an apprehension of the consequences of the sublime lesson of constancy, and faith, and self-sacrifice, and persevering courage, which we have given to the world, throughout a con-

test commenced under circumstances the most adverse, and prosecuted by the people themselves, with a more than royal munificence, as essentially *their* war, and the first in history that has been so recognized.

"In no aspect of the whole case were the eminent prudence and lofty patriotism of our great leader more strongly exemplified, than in the forbearance and moderation with which he ignored these transparent evidences of unfriendliness on the part of foreign governments, aggravated, as they were, by the most indecent personal attacks upon himself. Without personal resentments, and great enough to despise abuse, even if he had felt it, he knew that the success of our struggle was the best answer that could be made to those who wished us ill. He is already avenged in the only way in which his great heart would have desired it. The bloody catastrophe that hurried him from our sight, has flashed upon the European world with a suddenness which has swept down the barriers of prejudice, and extorted even from his enemies the confession, that in him a truly great man—of the pure American type—of far-reaching sagacity—of unexampled modesty and moderation—has fallen. The powers of language almost fail to convey their now exalted sense of the high-souled magnanimity with which he has forborne to respond in kind to the many provocations that have been offered. He is pronounced by great authority in England 'a king of men'—not in the Homeric sense, as used in reference to the Argive chief—not because, like the wrathful Achilles, whose ire was fruitful of unnumbered woes, he was

" 'Impiger, iracundus, inexorabilis, acer,'—

but because he was precisely the opposite of all these—peace-loving and placable, even to a fault. It stands admitted, that no word of his can now be found in all his foreign intercourse, to convey a menace or reproach. And then his exalted benevolence of heart—his moderation in the hour of victory the greatest—the entire absence of all natural exultation over a fallen foe—these, these are confessed to be so rare, as to take him out of the roll of vulgar conquerors, and lift him high above the ordinary level of humanity. It cost him nothing, however, to forgive, or even to compassionate an enemy. He was indeed much better fitted for the office of a *mediator*, than the function of a *judge*. It would have wrung his more than woman's heart to have been compelled even to do execution upon the guiltiest of the conspirators, as it did to put his name to the warrant that consigned the spy or the deserter to eternity. In thus according to him the palm of magnanimity—which is

only another word for *greatness of soul*, as its etymology implies—the highest eulogy has been pronounced on him that human lips could utter. His moderation in victory was but part and parcel of the same high attribute.

“Nor is it to be forgotten, while making these admissions, that there were other circumstances connected with this rebellion, that put this high quality to the severest proof, and rendered it impossible to indulge a sentiment so elevated and ennobling, without great peril to the general cause. Though war is, in all its aspects, even the most favorable, the direst scourge that Providence has ever permitted to afflict the earth, it has no form so hideous as the intestine strife that arrays brother against brother, and arms the father against the son in murderous conflict, and doubly intensifies, by its very unnaturalness, all the brutal and ferocious passions of our fallen nature. The family quarrel is proverbial for its bitterness, while the *odium theologicum* is the stereotyped, but feeble expression, of the rancor which has sometimes crept into the controversies of even Christian men. In the present case, however, there was a feature superadded on the one side, that lent ten-fold additional horror to the contest. The institution of human slavery—the prolific source of all our woes—tracked into the palatial mansions of the lordly proprietors, by a Nemesis which always follows upon the heels of a great wrong—as though Providence intended that Nature violated should always vindicate herself—had expelled from them every broad fraternal feeling—all that recognized the common brotherhood of humanity—and ended by unsexing the women, and making wolves and tigers of the men. All that was said of that institution, sometimes blasphemously mis-named divine, by the author of the great Declaration himself, had been already realized in the temper and condition of Southern society. To speak of these as barbarous, in the language of a learned and eloquent New England Senator, was, in the judgment of the more charitable and fastidious here, an offense against good taste and truth, that was thought by them to have deserved the felon blow that proved it to be true. The picture drawn by him was supposed by many to be greatly over-charged. How inadequately he portrayed its hideous aspect, is now seen in its conduct of this devastating war, which it has forced upon the country, and under which it has buried itself, thank God! so deep that it can produce no future eruption, even by turning uneasily in its grave. Hell never engendered such a monster, though ‘woman to the waist and fair’ as her who sat as portress at its gates. There is no page of history so dark and damning as that which

will record the fiendish atrocities of which it has been guilty, in an age of light. The manufacture of the bones of Union soldiers, left to bleach unburied on the soil where they fell, into personal ornaments for the delicate fingers of high-born Southern dames, or drinking cups for their chivalrous braves—the mutilation of the corpses of the uncoffined dead—the cold-blooded and systematic starvation and butchery of prisoners of war—the efforts to destroy, by wholesale, rail road trains, filled with innocent women and children—the employment of hired incendiaries to swing the midnight torch over the spires of sleeping cities—the invocation of the pestilential agencies of the miasma of the Southern swamps—and the diabolical, though unsuccessful attempt to inoculate our seaboard towns with the deadly virus of the plague—all are but episodes in the bloody drama that culminated in the assassination of the President. The cannibal of the South Sea Islands, and the savage of the American forests, who dances around the blazing fagots that encircle and consume his victim, have been over-matched in cold-blooded ingenuity of torture, by the refined barbarians—the Davises and Lees, and other ‘honorable and Christian’ gentlemen—who have inspired and conducted this revolt. God will witness for the North, that with all these inhuman provocations, and with a necessity that seemed almost inevitable, of putting an end to horrors such as these, by a system of just and exemplary retaliation, it has dealt with these great criminals with a degree of forbearance that has no example, and has but too often been mistaken by them for want of spirit, and a whole-some fear of their great prowess. When they went out, they were but wayward children, and we entreated them kindly. To spare their blood, we permitted them to envelope our defenses at Sumter, without resistance, when we could easily have prevented it. To keep the peace with them, we hesitated even to victual its starving garrison. When we were smitten, we did not even smite them in return. It was only when they flung insult and defiance at our country’s flag, that we felt our pulses quicken, and our blood kindling into flame. But even then, we could not fully realize that they were indeed our enemies. Our camps were closed against their slaves. Their officers, when captured, were treated with a distinction that made them feel that they had done no wrong, and dismissed on their paroles of *honor*, although they had been guilty of a base desertion of our flag. Their men were fed and clothed, and afterward exchanged as prisoners of war. And for much of this feeling they were indebted to the temper of the President, who held in check the impetuous ardor of the North, and incurred the risk of aliena-

ting his most steadfast friends, by a moderation so unusual in stormy times. There was no period, indeed, in which he would not have opened his arms to receive them back, without humiliation to themselves, and with the welcome that was accorded to the repentant and returning prodigal. His last expressions in regard to them were kind; his last measures intended to smooth the way for their return. And in recompense for all this, 'with wicked hands they slew him'—their best friend—just when his heart was overflowing with mercy and forgiveness for themselves. He had not learned—because his was not a nature to believe—that no kindness could soften or reclaim the leaders of this unholy rebellion. It was not a *crime* only, but a *blunder* the most serious on their part. Whether actuated by private malice, or stimulated by public ends, there was no time at which the blow that struck him down could have been dealt with less advantage to their cause, and so little personal detriment to him. If he had survived, he could not, in the course of nature, have looked for many years of life, and might have lived to disappoint the expectations of his friends, in what would probably have proved the most difficult part of his task, by a policy of mercy that would have brought no peace. The suppression of the rebellion was but the first step in the process of restoration. With the odds so largely in our favor, there could not at any time have existed any rational doubt as to the result of the contest, under any rational direction. It was not so much the *war*, as the *peace* which was to follow, that was dreaded by the wise. To suppress an armed rebellion was one thing; to reconstruct a government, resting, not on force, but on co-operative wills, was another and a higher task. The one called only for material agents; the other demanded the ripest wisdom of the statesman. The sword was the instrument of the former: a keener, subtler, and mightier instrument was required for the latter. It is not impossible that President Lincoln, with all his great qualities, might have failed at this point. If stern rigor and exemplary justice—if the confiscation of the property, or the exile or disfranchisement of the leaders of this wicked revolt, the dark assassins of our peace—if an absolute refusal to treat with those miscreants at all—were essential to the permanent restoration of peace and harmony in the land—as they are believed by many men to be—there was at least room for apprehension, that the kind and gentle spirit, the broad, catholic charity of our dead President, would have unfitted him for the task. It was a remark of one of the Greeks, that no man was happy, or sure of posthumous renown, until the grave had closed upon him. Abraham Lincoln's work was done, and done suc-

cessfully. He had disappointed nobody in the Free States, except the enemies who had hoped to rob *him* of the glory, and the country of the advantage of finishing up a task, which they had prematurely denounced as a failure. He is now beyond the reach of censure, or unfriendly criticism, with his record made up for history—honored and lamented as no man ever was before him; embalmed in the heart of a nation that has followed him to his tomb; doubly endeared to them by the cause in which he died—by his death as well as by his life; and surrounded by a halo that has invested him with a world-wide fame. Grieve not, then, for him. The blow that took him from our arms was but his passport for immortality. The nation has lost a President, but Abraham Lincoln has won an imperishable crown.

“The time is not now to subject the minute details of his administration to searching criticism. That men should differ in regard to this or the other measure of his policy, is not unreasonable. It was his fortune, as might have been expected of a cautious man, in a revolutionary era, to find himself occasionally at variance with his friends, as well as with his enemies. If he was sometimes too conservative for the former, he was always too radical for the latter, and was sure, therefore, to secure the good will of neither; but he yielded slowly to the indications of public opinion—which he *followed* only, and did not *lead*—and was generally sure in the end to bring the extremes into harmony, by disappointing both, and to find the public mind prepared to approve his acts. He explored his ground with care, and having reached his conclusion at last by long and patient thought, he stood upon it with a firmness that nothing could shake. With him there was no step backward. Having once planted himself on the ground of emancipation, as a necessity of state, by a process of laborious induction, he never afterward lost sight of that object, and never faltered in the execution of his plans. Adopted only as a *means*, because the restoration of the Union was his only *end*, it became at last so far an end, that he refused even to treat for that restoration upon any other condition than the absolute extinction of slavery, to which he now stood pledged before the world. It was partly because he then occupied a stand-point that opened to him a wider and more comprehensive field of vision, and enabled him to see that the Union could really be saved upon no other terms than those of absolute justice to the black man. The public mind had ripened with his own under the torrid atmosphere of revolution. The acts of his administration are, however, to be estimated in the light of the exceeding novelty, and the great responsibilities of his position. It is no fault of his,

even if a bolder policy might have resulted in earlier success. Men are always wise after the fact, but in his position, with the fate of a nation in his hands, there was no place for rash experiments, and he might well decline to take the risks, which others, without responsibility themselves, might have insisted on, in opposition to the opinions of advisers who were supposed to be better schooled in the affairs of nations than himself.

"And yet few men have understood the people better than Abraham Lincoln. With no advantages of education whatever, his associations had been more with men than books. His thoughts and style of expression all bear the impress of that early school. His ideas flowed in the same channels as theirs. No man was more at home with them, or better understood the art of winning their confidence, just because they recognized the relationship, and felt that his heart pulsed in unison with their own. His mind and character were indeed the natural growth of our free institutions, and he was so eminently a representative of them, that no other country could have produced his counterpart. A higher culture would only have disguised the man, by paring down the rough edges, and wearing away the individuality that so much distinguished him. Condemned to wrestle with poverty from the outset, he was indebted, no doubt, for a large share of the robust vigor of his genius, to that healthy development which results from a successful struggle with the accidents of fortune. Thus educated, he owed nothing of his success in life to the cultivated manners, or the bland and insinuating address—the ready coin of society—which the people are so often willing to accept as substitutes for learning and ability, and to which so many of our public men are indebted for their personal popularity, and their great success in the arena of politics. It would be difficult to find a man more unsymmetrically put together, or more essentially awkward and ungainly in his personal presence. It would be still more difficult to find a man so free from all pretension, so plain, and simple, and artless in his manner, and with so little apparent consciousness of the important part that he was enacting, or the great power that he had been called upon to wield. The necessities of state ceremonial—the ordeal of a public reception—were obviously the things that he most dreaded and disliked. It was impossible for one who knew him well, to look upon him there, or in a scene like that which attended his last inauguration at the Capitol, surrounded as he was by the ambassadors of all the crowned heads of Christendom, glittering in the gay tinsel and the heraldic insignia of their several orders, with a thousand bright eyes directed from the galleries

upon that unassuming man—himself the central figure of the group—without feeling that he was under a constraint of posture that did violence to his nature, and was as painful as it was embarrassing. The expression of his countenance, on such occasions, was one of sadness and abstraction from the scene around him—except when some familiar face was recognized, and greeted in the throng that crowded to take him by the hand. It was only in the retirement of his own private audience-chamber that the whole man shone out, and that he could be said to be truly himself. And there, with a perfect *abandon* of manner, surrendering himself, without constraint, to just such posture, however grotesque or inelegant, as was most agreeable to himself, feeling that the eye of the world was no longer on him, and forgetting that he was the ruler of a mighty nation, at a time of unexampled anxiety and peril, his eye and lip would light up with an expression of sweetness that was ineffable, while he interested and amused his auditor, by the ease and freedom of his conversation, and the inexhaustible fund of anecdote with which he enriched his discourse, and so aptly and strikingly illustrated the topics that he discussed. They err greatly, however, who suppose in him any undue levity of manner, or assign to him the credit of having been a habitual joker. If he told a story—and it was perhaps of his early life and experience—it either pointed a moral, or winged a thought to the mark at which it was aimed—and left it there. He was not long in divining the true characters of his visitors, and if he indulged in pleasantries, it was either to gratify their tastes, or to parry the impertinences to which he was so frequently subjected. Peculiarities so striking as those of Abraham Lincoln, are always singled out for broad caricature. A common face or character is altogether unfitted for the purpose. But like many men who have acquired a reputation for sprightliness and humor, the cast of his mind was deeply serious. With the grave and earnest, who came to discourse with him on important matters of state, he was always up to the height of that great argument; and there are few men living, with his imperfect training, and so little acquaintance with books, who can express their thoughts with more clearness, or force, or propriety of speech, than himself. He talked as he wrote, and the world knows with what originality, and precision, and felicity of phrase—without a model or a master—he dealt with the many perplexing questions that were presented to him. His style was indeed *sui generis*. Everything he wrote has the marks of its paternity so strongly impressed upon it, that the authorship cannot possibly be mistaken. Nobody could imitate

him; 'nobody but himself could be his parallel.' He had much of the genius of Swift, without any of his cynicism. Without polish or elegance, there was, however, an elevation of tone—a vein of deep faith, and of high religious trust, pervading some of his state papers, and especially his last inaugural address, that have placed the latter, in the judgment of some of the best European scholars, far above the range of criticism.

"But his crowning attribute—the one that won for him so large a place in the hearts of the people—so much more of true affection than has been ever inspired by the exploits of the successful warrior—was the large humanity that dwelt in that gentle bosom, which knew no resentments, and was ever open to the appeals of suffering. No feeling of vengeance ever found a lodgment there. No stormy passion ever stirred the quiet depths, or swept the even surface of his tranquil temperament. No wife or mother, who had begged her way to Washington, to ask the pardon of an erring husband, or the discharge of a wounded or dying son, was ever refused an audience, or ever retired from that presence without invoking Heaven's choicest blessings on the head of the good President, who could refuse nothing to a woman's tears. The wives and mothers of America have just paid back the tribute of their overflowing hearts, in the floods of sorrow with which they have deluged his grave. If he had a weakness, it was here, but it was such a weakness as angels might confess, and history will not care to extenuate. That his good nature was sometimes imposed upon is not improbable. For times and places such as his, a man of sterner mould is sometimes absolutely necessary. It is greatly to be doubted whether that gentle heart could ever have been persuaded to pronounce the deserved doom upon the guiltiest of the traitors. The crushing appeal of the wife and mother would have melted down his stoicism, like wax before the fire. His last Cabinet conversation, as officially reported to us, was full of tenderness and charity even for the rebel general who had abandoned our flag, and connived at the butchery of our prisoners. The word was scarcely uttered, before the gates of mercy were closed with impetuous recoil, and the gentle minister, who would have flung them wide, was removed forever, to give place to the inexorable judge. The awful form of Justice now appears upon the scene, to deal with those whom mercy could not mollify, while a world does homage to the great heart that is forever at rest.

"Yes! Abraham Lincoln rests. 'After life's fitful fever he sleeps well.' His work on earth is done. No couch of roses, no bed of luxurious down was that which pillowed his aching

head, during the four eventful years of his public ministry. No doubt his worn and jaded spirit panted for repose. He must have felt, as the clouds lifted around him, and the horizon of the future was all aglow with the splendors of the coming day, that he was about to enter on the full fruition of his long cherished hopes of a ransomed and reunited land. He had scaled a height, from which the eye of faith might sweep the boundless panorama of a happy continent, lapt in the repose of universal brotherhood—its brown forests and gold-bearing mountains bathed in the tranquil sunshine, and sleeping in the quiet solitude of nature—its lakes and rivers alive with the glancing keels of an abundant and industrious commerce—its plains dimpling with golden harvests—and the tall spires of its multitudinous cities, the resorts of traffic, and the homes of learning and the mechanic arts, pointing to the skies. But it was not his fate to enter into that rest which such a vision might have foreshadowed. Another and a more enduring, was to receive him into its cold embrace. He dies unconscious—without warning, and without a struggle—in the very hour of his triumph—in no darkened chamber—tossed by no agonies on an uneasy couch—with no lamentations and no wail of woe—no harrowing, heart-breaking farewells—to disturb his spirit in its heavenward flight; but by an unseen hand—in a moment of respite from corroding care—and in the presence of the people whom he loved. With so little to fear, he could not have made a happier exodus. How marked the contrast between his own last hours, and the last of the public life of the rebel chief, whose wicked counsels have either inspired the blow, or strengthened the hand that reached his life: Abraham Lincoln, who never injured a human being, dying at the capital, in the hour of his triumph, with no rancor in his heart, and nothing but charity and forgiveness for his enemies upon his lips—and Jefferson Davis, with the blood of half a million of people on his hands, flying like a thief in the night through the swamps of Georgia, and captured in the disguise of a woman, without even one manly effort at resistance! It had been better for his fame, if he had died too, even as he had lived. The genius of Milton almost flags under the sublime story of the flight and fall of the apostate archangel, when conquered but not dismayed, he plunged over the crystal battlements of heaven, 'with hideous ruin and combustion down,' till startled Chaos shook through his wild anarchy. It was reserved for the guilty leader of this not less infamous revolt, to find even a lower deep, where the dignity of the epic muse can never reach him.

"Rest then, honored shade! spirit of the gentle Lincoln, rest! No stain of innocent blood is on thy hand. No widow's tear—no orphan's wail shall ever trouble thy repose. No agonizing struggle, between the conflicting claims of mercy and of justice, shall afflict thee more. Thou hast but gone to swell the long procession of that noble army of martyrs, who left their places vacant at the family board, to perish for the faith in Southern dungeons, or to leave their bones unburied, or ridge with countless graves the soil that they have won and watered with their blood. Though lost to us, thou art not lost to memory. The benefactors of mankind live on beyond the grave. For thee, death ushers in the life that will not die. Thy deeds shall not die with thee, nor the cause or nation, which was aimed at in the mortal blow that laid thee low. What though no sculptured column shall arise to mark thy sepulchre, and proclaim to future times the broad humanity—the true nobility of soul—the moderation in success—that, by the confession of his harshest critics, have crowned the untutored and unpretending child of the prairies, as the 'King of men?' What though the quiet woodland cemetery that shelters thy remains, and woos the pilgrim to its leafy shades, shall show no costly cenotaph—no offerings save those which the hand of affection plants, or that of nature sheds upon the hallowed mound that marks thy resting place? What though the muse of history, who registers thy acts, and inscribes thee high among the favored few, to whom God has given the privilege of promoting the happiness of their kind, should fail to record the quiet and unobtrusive virtues that cluster round the hearth and heart, and shrink from the glare of day? There is a chronicler more faithful, that will take thy story up where history may leave it. The pen of the Recording Angel will write it in the chancery of Heaven, while the lips of childhood will be taught to repeat the tragic tale, until memory shall mellow into the golden light of tradition, and poesy shall claim thy story for its theme. But long ere this—even now in our own day and generation—the cotton fields and the rice swamps of the South will be vocal with thy praise, while the voice of the emancipated white man shall swell the choral harmony that ascends from the lips of the dusky child of the tropics, as he lightens his daily toil—now sweet because no longer unrequited—by extemporizing his simple gratitude in unpremeditated lays, in honor of the good President who died to make him free. The mightiest potentates of earth have labored vainly to secure a place in the memories and the regards of men, by dazzling exhibitions of their power to enslave. Both Memphian and Assyrian kings, whose very names had perished

but for the researches of the learned, have sought to perpetuate their deeds and glory in the rock tombs of the Nile, and the unburied bas-reliefs of Nineveh and Babylon, covered with long trains of sorrowing captives, manacled and bound, and dragged along to swell the victors' triumphs, or, perhaps, as votive offerings to the temples of their bestial gods. It was reserved for thee to find a surer road to fame, by no parade of conquest. No mournful train of miserable thralls either graces or degrades thy triumph. The subjugated are made free, and the hereditary bondsman drops his galling chain, and feels that he is once more a man. If the genius of sculpture should seek to preserve thy name, it will present thee, lifting from their abject posture, and leading by the hand, with gentle solicitation, the enfranchised millions of a subject race, and laying down their fetters, as a free-will offering, upon the altars of that God who is the common Father of mankind."

This "eloquent and truthful eulogy" was published by the leading citizens of Pittsburgh, and Captain Schenley of London had it reprinted over there with a short vindication of the services of General Meade.¹ "I read the last two columns (I confess it) amidst blinding tears," wrote the Hon. Isaac N. Arnold, one of Lincoln's most intimate and trusted advisers and author of a posthumously issued "Life of Lincoln." "Your eulogy is a grand lyric to Liberty and Lincoln and the closing parts of it among the most eloquent things I ever read."²

¹ Captain Schenley's letters of July 16 and September 11, 1865, among the Williams papers.

² Letter of Representative Arnold of June 12, 1865, from Washington, among the Williams papers. He says: "I am trying to write a history of his administration and there is much that is suggestive in what you say." This developed into the "Life," which was issued after his death by Jansen, McClurg & Co. in 1885.

CHAPTER XVII

THE THIRTY-NINTH CONGRESS

HIS BRILLIANT SPEECH ON "RECONSTRUCTION"

HIS TENURE-OF-OFFICE BILL DETERMINES LINE OF ATTACK ON PRESIDENT JOHNSON

1865

Neither the American people nor their representatives were in a very conciliatory mood during the closing months of the year 1865. When the Thirty-ninth Congress assembled on December 4th Mr. Williams was among those returned, and he was retained on the same committees; indeed, the judiciary committee, as a whole, embraced almost the same membership as before.¹ He took a more active part in all that came before the House this time, almost from the first, and so early as February 10th (1866), made another great speech, this time on "Reconstruction," and it serves to show how he anticipated its questions in his first speech on this subject, and also how far toward the position he then took the country and Congress itself had moved. It also shows the first premonitions of the contest that was to rage with such bitterness between the legislative and executive departments.²

"Mr. Speaker," he began, "nearly two years ago, and while the war was flagrant, I felt it my duty as a member of this body

¹ *Congressional Globe*, Thirty-ninth Congress, 1st Session, Part 1, p. 21.

² *Congressional Globe*, Thirty-ninth Congress, 1st Session, Part 1, p. 784.

The congressional executive committee valued it so highly that after the regular issue was exhausted they ordered 100,000 more. Letter of March 15, 1866, among the Williams papers.

Mr. Williams led action against the President's course early in the session by offering two resolutions, one directing that no troops should be removed from the South without the direction of Congress and the other directing the trial of Davis and Lee by a military commission. Letter of January 27, 1866.



PRESIDENT ANDREW JOHNSON

Halftone of a contemporary photograph by Brady, negative in possession of
L. C. Handy, Washington, D. C.

to look into the question of the relations that had been produced by it, the privileges that have been forfeited on the one hand, and the rights and powers that had been acquired on the other, with a view to the readjustment of the whole machine by the restoration of those parts that had been sundered from it by the disturbance. With some—the infirm of faith—the inquiry was thought to be premature. This, however, was not the judgment of the last Congress. It passed a bill which did not meet the approval of the Executive, because it interfered with a plan of his own that had not proved acceptable to it, and the question was adjourned without advice from that body, and in such a way as to leave the field open for experiments with which it was not in a condition to interfere.

"The people are here again in the persons of their representatives, who are the law-making power of the nation, not on invitation, but by constitutional mandate, to inquire what has been attempted, and to decide for themselves what shall be done with the Territories that have been conquered by their arms. It is agreed on all hands that they shall be eventually readmitted as members of the common family. It is not pretended by anybody that they can resume their places here of their own mere volition, and without any consent of ours. It is not insisted, I think, by any well-read statesman, that our power to exclude depends only on our right to determine upon the qualifications of our own members. It is confessed that there is an organic lesion that forbids their return, and can only be supplied by a new organization which no act of spontaneous generation can produce. It will scarcely be contended now, I suppose, as it was by an eccentric committee of the last House, that our victory was crowned only with a lapse of sovereignty, or that the jurisdiction to restore a lost member is anywhere but here. I shall be excused, of course, for returning to this subject under circumstances that not only invite, but compel its discussion. If it was not proper for Congress to prescribe in advance the law that was to govern this question in the last resort, at all events, while other agencies, mistaking perhaps its backwardness for an abdication of its rightful powers, were industriously employed in forestalling its own action, it is no longer possible, in view of what has occurred since the last adjournment, and of the forces that have been mustered to overbear our deliberations here to avoid a conflict that has been so long foreshadowed.

"To determine this great question, the greatest by far that has ever challenged the deliberations of an American Congress, it is important to inquire, in the first place, what is the posture of these Territories, as it has been affected by the progress and

results of the war, which has just been determined by their enforced submission to the authority of the nation?

"So far, at least, as armed resistance is concerned, it may be assumed that the war is at an end. The deluded communities that have so wantonly insulted this Government and defied its power, now lie conquered, and helpless, and in social ruin at our feet, deprived, by their own act—I will not say, in the language of the proclamations that have been addressed to them, of 'all civil government whatever'—but certainly of all the organism that was essential to the maintenance of their old relations to the Union. To claim any more than this, would be to assume a condition of anarchy, where there is still a 'supreme law' under the Constitution, and where, even in the absence of such a rule, the territory reclaimed must necessarily pass under the jurisdiction and law of the conqueror. Taking it, however, to be true, as stated, then, by necessary inference, the civil law of the Union is dethroned, and its military power is all that remains to hold these States in subjection to our authority. In point of fact, we do so hold them now—except so far as they have been surrendered to the enemy—without other law than our own sovereign will. The supreme executive functionary of this nation, who, by virtue of his office, is the Commander-in-Chief of its armies, feeling that they were not in a condition to be trusted to themselves, instead of sheathing the sword, convoking the representatives of the people, advising them that these provinces were tranquillized, and submitting to them, as the law-making power, the grave question, what is to be done with them? has preferred to await the usual period of our assemblage, and appointed his lieutenants and proconsuls to govern them in the meanwhile, with the aid of armies, and the terrors of that arbitrary code which is known by the name of martial law. We are here now, however, and it becomes our first duty to relieve that officer from this unusual and inappropriate task, and to furnish some security to the conquered people by the substitution of another and a gentler rule.

"I would not be understood, however, as questioning the exercise of a sovereignty like this, so long as it was necessitated by the absence of a legislative power, since that is but a logical consequence of the position previously maintained by me on this floor, that these States had ceased to be members of the Union, and passed into the condition of Territories. If they continued to be States, within the meaning of the Constitution, the moment the resistance ceased it would have been the duty of the Executive to withdraw the armies, and they would have at once resumed their *status quo ante*, with all their constitu-

tional rights and privileges unimpaired. If they were still States, all that has been done since, even though the power of Congress had been invoked to authorize it, would have been the clearest of usurpations. Taking them, however, to have been 'deprived,' in the language of the proclamations, 'of all civil government whatever,' it was but a legitimate inference of the Executive, that they had not only forfeited their elective franchise, and lost their property in slaves, but placed themselves in a condition where they were no longer entitled even to the benefit of the constitutional guaranty without a new birth. The idea of any State, except that of nature, without any 'civil government whatever,' is as incomprehensible to me as that of a State being in the Union, or indeed anywhere, that is admitted to have no existence whatever.

"No more would I be inclined to quarrel with those who, starting from these premises, are still disposed to insist that these States were never out. The difference is perhaps only the result of a want of precision in the use of terms, or a diversity of opinion in regard to their meaning. Mr. Burke has furnished us with a distinction here that meets the case precisely. 'The word State,' he remarks in his letter to Sir Hercules Langrishe, on the subject of the extension of the elective franchise to the Irish Catholics, 'is one of much ambiguity. Sometimes it is used to signify the whole commonwealth, comprehending all its orders, with the several privileges belonging to each. Sometimes it signifies only the higher, and ruling part of the commonwealth, which is commonly called the government.' In the former of these senses, it is not to be doubted that these communities still exist, and are *in* the Union, or *of* the Union, because their territories belong to it, and their people owe it allegiance. In the latter, however—and that is the one that connects them with our political system, as the proclamations concede—they are admitted by the same proclamations to have been destroyed, and can, of course, be *nowhere*. And this will be found to reconcile the apparent contradiction between the language of the proclamations, and the accordant practice of the Government on the one hand, and the theory of those who are supposed to speak its opinions, and infer from some unhappy phraseology of the former, as well as from the more recent utterances of the message, the repugnant idea that there was a constitution of government left existing amid the general wreck, in a case where it had been previously declared in terms that there was 'no civil government whatever.'

"There can be no real dispute, therefore, between the Executive and his northern friends as to the posture of these

dilapidated members. Their entire treatment by him shows that they have only been regarded practically as conquered provinces. I deprecate, however, the encouragement that has been given to the enemies of the Government, by the promulgation of the fallacious doctrine, which has found so ready a currency among the disaffected of the North, and has proved so welcome to the unrepentant rebels of the South, that these disorganized States have never ceased to be members of the Federal Union. That is the present theory of every traitor, North or South, who has been insisting for four long years of war on the *right*, as well as the *fact* of secession. With strong assurances of pardon, they can well afford to risk the consequences of treason, by repudiating the belligerency upon which they have heretofore claimed immunity for their crime, if it will restore them to their original rights, and serve them as an argument against the legality of the proclamation that has stripped them of their property in slaves. Grant them the postulate that all their acts of secession were not a fact, but a nullity—that the crime which they committed was impossible, because it was forbidden—and if they cannot invalidate the war, and the debt that was made by it, they will at least stagger your courts with the question, by what authority under the Constitution, you have presumed to deprive the people of a State *within* the Union, by proclamation and without judgment of law, of any of their franchises or property. They will admit it now as an incident of the war—if there was a war, or could be, where there was no secession, and therefore no belligerent—so far as the thing was consummated by an actual seizure, just as they are now ready to confess that the right of secession has been disproved by the logic of the sword—which means only by their present inability to maintain it by that argument—while their northern brethren still assert the very heresy upon which it rests. But once in, they will take you at your word, and insist that all your intermediate acts were nullities as well as theirs.

Agreeing, however, as we all do, that these States, without any local law or governments of their own, have passed under the law of the conqueror—and the attempt to reorganize them by Federal authority is an admission of it—the next question, into the discussion of which we are now prematurely hurried, is not how they are to be governed until they shall be in a condition to return—because that seems to have been assumed to be no business of ours—but whether that condition has been reached, and what are to be the agencies and terms, through and upon which this consummation is to be effected.

"If there be any one question that more than another falls within the exclusive cognizance of the people of the loyal States, and deserves and demands the thoughtful consideration of their Representatives, it is just this. Eleven of the columnar supports of our political edifice are now lying around us, like the giant columns of Tadmor and Palmyra, with shaft, and capital, and architrave alike shattered by the mighty convulsion that has laid them all in ruins. Where is the hand that is to lift these columns to their place? Who is it that shall reunite the dis-severed fragments, and wreath the ivy over the towers that have been rent from turret to foundation? What are to be the process and the conditions, on which these great criminals, who, 'like the base Judean,' have wantonly flung away 'a pearl richer than all their tribe,' are to be readmitted into the enjoyment of the privileges they have rejected and despised, and received again into the fellowship of the men they hated, and the confidence and honors of the Government they have only failed to destroy, because it has proved too strong even for a degree of treachery that has no parallel in history? How far are these baffled parricides to be trusted again, now that they are vanquished, and without power of resistance, after such an experience, after so bloody a lesson as they have taught us—and what are the guards that will be required to prevent a recurrence of any of the evils from which we have just escaped? All these are problems which, however simple they may have been considered in some quarters, might well embarrass the profoundest of our statesmen, and which all the collective wisdom of the nation will not be more than sufficient to solve. The war itself, stupendous as it has proved, was nothing in the comparison. There never was a reasonable doubt as to the suppression of the rebellion, provided the loyal States should prove true to themselves. It was a purely arithmetical problem, of which the elements were within the reach of everybody. If all the slave States had been united, eighteen millions of the northern freemen, with the credit, and resources, and prestige of this great Government on their side, and man for man the peers of their enemy, were sure to subdue less than one half their number, with four millions of a disaffected population in their midst, as soon as they were allowed to strike at the heart of the rebellion, and it came to be understood that it was to be a war *à l'outrance*. The only real danger was in the prospective and inevitable process of reconstruction. It was a question only whether there would be wisdom enough in the councils of the nation to profit by the heroism of our soldiers in the field, or folly enough to throw away the fruits of the many sacrifices that this long and bloody

war had cost us, by ignoring our past experience, and rushing with headlong precipitation, and immature resolve, into measures of restoration, resting on no system or principle, and reserving no guarantees for the future. We have just reached that point. The rebellion, so far, at all events, as armed resistance is concerned, is over. We still tread, however, on the ashes of an unextinguished volcano—*'supposito cinere doloso.'* 'An earthquake's spoils are sepulchered below.' The ground still heaves and trembles; the fiery flood still surges and pulsates beneath our feet; and already, almost before the thunders of our artillery have rolled into the distance, and while the smoke of battle is still upon the plain—without a moment's pause to survey the wide field of ruin, and reach forward, if possible, with telescopic vision into all the bearings, and all the remotest possible consequences of the act which we are called upon to do—a childish impatience is urging us upon a path where angels might fear to tread, and expecting us to crowd the structure of an empire—the ordinary work of centuries—into the deliberations of an hour.

"Upon considerations such as these, I would have preferred to wait until the two Houses, acting in their legislative capacities, and in the spirit of statesmen who are charged with the interests of half a continent, had matured some plan which would secure uniformity in our proceedings here, while it furnished to the whole country—to the loyal people of the returning States, as well as to ourselves—all the safeguards which the circumstances of the case required. My judgment is that you can proceed lawfully in no other way. If restoration is the object; if these State governments have been destroyed and must be organized anew; if the people of these States must be enabled to restore them to their old relations, and put them in a way to entitle them to claim the benefits of the constitutional guaranty through the agency of the Federal authorities; if they must be readmitted; if the guaranty is to be fulfilled—all which things are conceded by the proclamations—then it is as clear as sunlight that nothing short of an act of Congress—a law in all its constitutional forms can accomplish this work. But I am in no hurry even as to this. *Festina lente* is the motto for a statesman. States are of slow growth. A century is but a day in the life of a nation. The great poet has said—

"A thousand years scarce serve to form a State;
An hour may lay it in the dust."

"To heal the wounds inflicted by a four years' civil war is not the work of a day. If we would do it well, we must imitate

the processes of nature, beginning at the bottom and working slowly to the surface. Sound statesmanship would declare in favor of this course in any case. It would tolerate no other where there is so little excuse for precipitancy, where there is no real pressure except that which is invited by ourselves, and where a mistake once made, however disastrous in its effects, would be absolutely irremediable. That privilege is, however, denied to us. Though we had declined to court this issue by going out to meet it, it has come to seek us here, and if we have not been allowed to provide by law, in advance of the occasion, a rule which shall govern all cases, we must at least meet it in the more questionable shape in which it presents itself, though under disadvantages not unlike those we had to encounter with the same parties at the beginning of the war.

"The present Executive of the nation, acting upon the prevalent idea that it is the duty of the Government to take the initiative step in the process of restoration, instead of awaiting any spontaneous action, or the expression of any desire on the part of the people of the rebel States to return to their original relations in the Union—which could be only properly conveyed by an appeal to Congress—has, in the recess of this body, and on the cessation of active hostilities in these States, concluded it to be his duty to direct their organization, along with the process by which it is to be effected, in order to entitle them to the benefit of the constitutional guaranty, and has accordingly indicated his plan in a series of proclamations, which are all of the like tenor, though differing in some respects from the plan of his predecessor. The presumption was that they would in all instances conform to the law that he had prescribed for them. Having so complied, they would naturally expect that their immediate lawgiver, although then understood to admit the ultimate decision to rest with Congress alone, would recommend their admission, and enforce that recommendation with all the influence that he could lawfully exert. It becomes important, therefore, to look into that process, and ascertain whether it was consistent with the spirit of our institutions; whether it rested on any correct view of the relations with which it had to deal; and how far it was calculated to secure the object for which it was professedly contrived.

"A careful analysis of these instruments will be found to result in the development of the following leading propositions:

"1. They admit the continuing existence of a state of war, and profess to rest in the two-fold authority of the President, as Commander-in-Chief of the Army and Navy of the United

States, as well as supreme civil executive magistrate of the Union.

"2. They declare the people of these States to have been deprived by their own acts of all civil government whatever.

"3. They confess the necessity of a new organization, for the purpose of restoring their constitutional relations with the Federal Government, and presenting such form of government as will entitle them to the benefit of its guaranties, and therein admit that they are not so entitled in their present condition.

"4. They concede that the new organization must receive its impulse and direction from without, and be assisted by the co-operative action of the Federal authorities.

"5. Confessing, however, that these States are not now entitled to the benefit of the constitutional guaranty, they assert, in effect, that under it, the Federal Government is bound to place them in a position which will enable them to *claim* it, and assume that the fulfillment of that guaranty is a purely executive function, to be performed in such a way as the judgment of the President may determine.

"6. They direct, accordingly, the assemblage of conventions at the earliest practicable day, and define and ascertain the qualifications of the voters.

"7. In fixing those qualifications they adopt a standard that is entirely new, by limiting the franchise, not to the white men generally, but to such only of the people who were invested with that prerogative under the government that is admitted to have been destroyed, as are loyal, and will swear to support, not the Constitution only, but all laws and proclamations during the rebellion having reference to the emancipation of slaves.

"8. Admitting, moreover, that these States are without any civil government whatever, and that they must necessarily organize anew, they insist that it shall be done upon the partial recognition of a government that has been destroyed, by a process, not of organization at all, but of amendment and alteration only, that shall work simply on that part of the defunct corpus which was left untouched by the ordinances of secession, and whose continued existence would involve a denial of the right of Federal interference, and is in direct contradiction of the premises on which these proclamations rest.

"9. They look, moreover, to the employment of the military arm in the execution and enforcement of the scheme of restoration which they involve.

"With all proper respect for the Executive, I am constrained to say that there are evidences here, either that these proclamations could not have been considered or digested with

the care which so great an occasion would seem to have demanded, or that the case might not unprofitably have been transferred from the other end of the Avenue, to its appropriate forum in the great council of the nation, assembled here to deliberate upon its interests, and vested exclusively with the high power of legislating in regard to its Territories, of admitting new States, and of fulfilling all constitutional guarantees. My reasons for so thinking will, however, be better understood from the remarks I have to offer on the several propositions which I have extracted from them.

“It may be safely affirmed, I think, that the existence of a state of war, whether that war be openly aggressive and demonstrative in its character, or exhibiting itself only in sullen discontent, or disaffection, or hatred of the Government, such as to necessitate the presence of a military force to compel obedience to the national authority, or to prevent a seizure of the local power, is utterly irreconcilable with the idea of such an organization, as the genius of our institutions, and the very texture of our Government would demand. Without the spontaneous and unrestrained volition of the majority of the people, I cannot conceive the idea of the existence, or constitution of a republican State. A form of government erected by or for a minority of the people, and depending upon armies for its existence or support, would be the merest mockery of a republic, and could not be recognized here consistently with the terms of the constitutional guaranty. It is a self-evident proposition that so long as it requires an army, or a Federal legate—whether called by the name of provisional governor, lieutenant, commandant, proconsul, or pretorian prefect—to govern it, it is not in a condition to perform that task itself; and the very appointment, which would be otherwise unlawful, is a confession of it. While the Executive holds the Territory within his grasp as the Commander-in-Chief of our armies, he holds it under military law—which is the only law he can administer—and by a power that is absolute; and it is idle to talk about the restoration of the civil authority by the voluntary act of the people themselves, because he is essentially supreme. The power he wields is above the law, and silences the law. There can be no two codes—no divided *imperium* here. The man who so rules is essentially a dictator; and it makes no difference in principle whether he prescribes the law for a good purpose, or a bad one. It is impossible that the people should act freely under such a domination. It is only when it ceases that they can truly be regarded as their own masters. The jealousy of our fathers has guarded against the very presence of the military

on the election ground, even where the civil law reigned, and the subordination of the military was unquestioned. Where it knows no law, however, except its own will, and stands by to direct and execute that will, the acts done, which would be clearly invalidated thereby in the States, are its own. If it assembles conventions and names the voters, they are its creatures. If it elects Congressmen, they represent it only. If the product of its imperial rescript is a republic in form, it is a republic engendered from the decomposing remains of the dead sovereignty, under the fierce embrace of the military power—a republic hatched into life by the spirit of despotism brooding over a chaos of ruin. To say that a monstrous birth like this, tearing its way through the entrails of the State—a delivery by the sword—assisted by the matronly offices of a provisional governor, and graced by a more than royal attendance in the high functionaries of State, 'the military commandant of the department, and all officers and persons in the military and naval service,' who are expressly summoned to be present on the august occasion—is the legitimate offspring of a free people, or has any of the features of a republic within the meaning of the Constitution, is to draw largely on the imagination. Freedom recoils aghast at such an apparition, and shrieks out 'death!' Nor will it be sufficient to assert that these sword-bearers were not actually present in the body, and that therefore no control was exercised over these provincial councils by their creator and lawgiver. We know that when the fiat went forth publicly to the hesitating synod of North Carolina, that the debt of the rebellion must be repudiated, every knee went down in humble submission to the orders of the Commander-in-Chief. We know, too, from the very recent message of the rebel general and Governor of Mississippi, (Humphreys,) who was pardoned specially to qualify him for the place, that it was 'under the pressure of Federal bayonets' that the people of that State 'have abolished the institution of slavery;' and it is not uncharitable to infer that the members of all those bodies knew precisely how much would be expected of them, and were prepared to do the will of the Executive, even though it had extended to suffrage for the black man. Disguise it as we may, these so-called constitutions of government are but articles of capitulation after the fact; treaties between that officer, dealing with these questions as an absolute sovereign, and the chiefs of the rebellion; terms dictated by the President as a conqueror, in accordance with his own individual and imperial will; agreements reluctantly conceded by them, as the condition not only of pardon, but of restoration to power.

but almost invariably repudiated by their followers, in the refusal to ratify them by sending men here who were qualified under the law of Congress to take their places amongst us. That they are so considered, even by themselves, is shown by the recent correspondence between the high contracting powers, represented by our Minister of *Foreign Relations* on the one hand and Governor Orr of South Carolina on the other, in which it is declared by the latter that the State convention, which he admits to be a revolutionary body, had been dissolved ‘after having done all that the President requested to be done.’ It is shown, too, more strongly, in the letter of the rebel General Hampton to the people of South Carolina, declining to be a candidate for Governor, on the ground that it might embarrass the Executive in his benevolent designs in favor of the South. Though not approving all that was conceded by the convention, he recommends their acquiescence in what he treats as the demands of the conqueror, on the ground of necessity, and for the special reason that the President ‘had exhibited a strong disposition not only to protect the South from *the radicalism of the North*, but to reinstate them in their civil and political rights.’ ‘It may be assumed,’ he adds, ‘that when the forms of government are restored, *and freedom of speech allowed to us*, your late convention, will be subjected to harsh criticism, and its action impugned. Should such unhappily be the case, remember that you, the people of South Carolina, accepted the convention as *part and parcel of the terms of your surrender*. The President had no shadow of authority, I admit, under the Constitution of the United States to order a convention in this or any other State; but as a conqueror he had the right to offer, if not to dictate, terms. The terms offered by him you have accepted. I do not myself fully concur in all the measures adopted by the convention, but I shall cheerfully acquiesce in the action it took to carry out faithfully the terms agreed on. Entertaining these views, I think it our duty to sustain the President of the United States so long as he manifests a disposition to restore all our rights as a sovereign State. Above all, let us stand by our State. Her record is honorable, her escutcheon untarnished.’ When a man like Hampton speaks of ‘*the radicalism of the North*,’ we know that he intends the Union party of the free States, who favored the prosecution of the war and elected the President himself, and the men whom they have sent here to declare their will; and it is on the disposition of the President to protect them from his own friends in the country, and in these Halls—the feeling that they could make a better bargain with him, and were safer in his hands than in those of the people

and their Congress—that, without one word in favor of the Union, but with an earnest invocation to the people to stand, above all things, by their own *honorable* and *untarnished* State, he urges them to support, not the Union, but the President, and him only 'so long as he manifests a disposition to restore all their rights as a sovereign State,' including, of course, the transcendent and inalienable right of secession. And the Executive responds to this presentation of the case, by informing us in his late message that we have nothing to do with the terms of settlement, while the gentleman from New York, [Mr. RAYMOND,] who is supposed to reflect his opinions, is candid enough to put his vindication of the special requirements of that functionary on the same grounds, and in language almost identical with that of the traitor Hampton. It is a waste of time, however, to labor a point like this. If the orders of the Commanding General, as enunciated through the proclamations themselves, were in point of fact obeyed, it is sufficient for the purposes of this argument. To deny his control over the creatures of his own will, because his subordinates did not stand over their deliberations with a drawn sword, would be the merest of subterfuges. As well might it be said that the Maker of all things, who launched the circumambient orbs through the immensity of space, and prescribed the law of gravitation for their government, was exercising no control, because He was not on sleepless watch at the center of the system, and telegraphing his special orders to Neptune and Uranus, by way of keeping them on the track as they sped their unerring way through the mazy labyrinth of the stellar worlds.

"It will be urged, however, as it has been, that this was a measure of peace; an instrumentality essential to the tranquillization of those States; a part of the process for the restoration of order that must precede the withdrawal of the national authority, and would enable the loyal people there to dispense with the further presence of its armies. The answer is, that if it was intended to place the reins in the hands of the loyal minority of white men, while it confesses a condition of things where a republic is impracticable, and an election would be an absurdity, it could insure no peace and no permanent ascendancy to that element, without continued protection, because it required a military power to inaugurate it—just as is now admitted by Governor Brownlow to be the case in Tennessee; and if it was intended merely to restore the disloyal majority who governed before the rebellion, and hurried these States into it, then it was unnecessary. The idea is, in plain English, if not to make them our masters, at least to free them from

our authority in the first place, in the *hope* that it will secure peace and submission in the future. I cannot consent to any such arrangement. I do not comprehend the value of that tranquillity which is only to be purchased by the abdication of our power, whether it be by the withdrawal of our troops, the restoration to the enemy of the arms that he was compelled to lay down on the last of his battle-fields, or the invitation—I should rather say command—to him to share our counsels in the adjustment of the results and the responsibilities of the war. If this be peace, it might have been secured at any time, with only the waiver of our right to insist that they shall sit down on the judgment seat, and divide the empire with us. It may be secured now by allowing them to resume their power and places here, upon the cheap consideration of a temporary acknowledgment that the negro is no longer an article of merchandise, because all their chances of success in this rebellion now depend on a change of weapons, and the retransfer of the theater of war to the arena where it began. I say in this rebellion, because I am not sanguine enough to consider it at an end—as a very recent opinion of the Attorney General transmitted by the President, admits it is not. There are those, I know, who cannot comprehend a state of war, unless it comes home to their grosser senses in the rude shock of battalions and the groans of the wounded and the dying, and think, therefore, when the standard drops from the nerveless grasp, that this is peace. It is to form a very inadequate conception of a kind of arbitrament that depends as much on skillful tactics as on hard knocks. Resistance does not always cease when its arms are stricken from its hands. The victory is not always to the strong. It is as often the guerdon of the wise. True, we have conquered these people in battle, but what of that? No man was ever converted from an enemy into a friend by the summary logic of shot and shell.

"Who overcomes
By force, hath overcome but half his foe."

The demoniac spirit that animated this rebellion—the same that mutilated and starved and butchered our martyred heroes, that inoculated the veins, and rotted off the strong arm of the northern warrior with the deadly venom of the lazar-house, that baled the yellow fever as merchandise for this capital, and that ended by assassinating our President—still lives, unrepentant, unsubdued, ferocious, and devilish as ever. The battle still rages, as it did in these Halls long before the outbreak of the rebellion, though under a new phase.

"What though the field be lost?
All is not lost."

If arms have failed, there are other weapons, rejected by the South in its blind and unreasoning arrogance, which have proved in other times more potent in its hands than the puny sword that has just been shattered like a potsherd in its collision with the iron muscle of the sinewy laboring man of the free States. A bloody experience has taught them their mistake in crossing swords with the soldiers of the North instead of fighting the battle *in* the Union, and relying on the folly of its statesmen, and the superior address that harnessed its fierce democracy to their triumphal car, and made them the masters of the nation until the period of their revolt. Hurlled to the earth like their great prototypes in crime, how natural to find the like consolation in the reflection:

"Henceforth their might we know, and know our own;
So as not either to provoke, or dread
New war provoked; our better part remains
To work in close design, by fraud or guile,
What force effected not."

"But this is not the peace that we have been endeavoring to secure. This is not victory, but defeat—just such defeat as that which follows the astounding paradox that our supposed triumph on the Appomattox, that made every heart leap with joy, has only purged the guilt of our enemies and reinstated them here with no right impaired, to 'beard us in our hall,' and 'push us from our stools.' There is nothing, therefore, in the argument to drive us into such an inversion of the natural and logical order as would be involved in the imposition of State governments by the military arm, any more than there is to hurry us into a premature and ill-adjusted scheme of restoration, when there is abundant leisure to arrange our plans, and a false step would be irrevocable. I want a real peace before reorganization and readmission here. Invert the order, and we shall have no peace. It will only amount, as I have before hinted, to a change of weapons, and a retransfer of the seat of war to these Chambers, whence they went out four years ago to try the bloody issue that has been determined against them, just as they had before gone out in couples to seek the blood of some northern Representative.

"And now, as to the admission that the people of the seceding States have been deprived of all civil government whatever.

"During the last Congress, as I have already remarked, I took some pains to show that these States were, by construction

of law as well as in point of fact, outside of the Union, because it was apparent that the whole question of our power to deal with them in such a way as to realize the legitimate results of the war, and exact the necessary securities for our future peace, must depend on the relation in which the war had left them. The phraseology, though sufficiently precise, was not perhaps as well chosen as it might have been, to exclude the idea either that they were out rightfully as States, or out in point of fact territorially. The '*rari nantes*,' the few citizens of those States who, though outlawed by the belligerent relation recognized by our courts, as well as by the whole conduct of the war, and positively established by our legislation here, still remained 'faithful among the faithless' would naturally protest against a form of expression that seemed to shut them out from the relation of citizens, and to give them the character of alien enemies; and it is perhaps, therefore, no great matter of surprise that the doctrine should have found so little favor in high places. I do not care to reargue that question now, because it is perhaps not material. Taking the word State as contradistinguished from that of Government—for which there is unquestionably an example and a warrant in the language of the constitutional clause of guaranty—to mean, as it has been defined by so great an authority as Mr. Burke, 'the commonwealth at large, with all its orders, and all the rights belonging to each,' and not 'the ruling or governing power,' it may be admitted without damage to the argument that they are still in. In that aspect of the case it must signify the territory, or the people, whether black or white, loyal or disloyal, or both. It cannot be the territory only, because it would then continue to be a State, although deprived of its inhabitants as well as of its government, in which case it was never pretended that it was out. It cannot mean the people only, because that would make them a State, though all disclaiming their allegiance, or all alien enemies, and owing none except such as was qualified, and temporary, and purely domiciliary. In this sense it is a compound idea, of which one of the elements is necessarily a loyal people, and a perception of which is discernible in the fact, that under the plan of the proclamations the voters are to be confined to the loyal, or at least that portion of them which has the accidental advantage of having straighter hair or somewhat whiter skins than the residue.

"It is enough for my purpose, however, that their political organizations, through which only they can maintain their appropriate relations to our governmental system, have been—as it is admitted they are—entirely destroyed; a point which could not

be well contested in view of the common-law rules that govern in cases of public or municipal, as of merely private corporations. The proclamations go further in affirming that they have been 'deprived of all civil government whatever,' which would imply a state of anarchy, and ignore alike the law of conquest, and 'the supreme law' under the Constitution, and thus extrude them from the Union by a strict logical necessity. By this, however, the President intends, no doubt, the local governments alone. He cannot affirm a condition of anarchy, as this would be, so long as he maintains that they are still in the Union and subject to its laws, or in even asserting, as he does by the proclamations themselves, the continuing jurisdiction and authority of the national Government over them. Without any government whatever there can be no social state except that of nature. It is as impossible to conceive the existence of a civil or political State without an organism, as it would be that of an animal or vegetable body in like predicament. Stripped, however, of all the political organizations that held them together as members of this Union, they must of necessity have lapsed into a condition where everything was lost except their territorial relations and identity. In this condition, however, of local dissolution, it is admitted on all hands that they are without powers of self-resurrection, that without governments themselves they must receive their impulse from without—from their only remaining sovereign; and that these dry bones—these festering, decomposing elements—must at least be breathed upon in order that they may live; and therefore it is that the Executive Magistrate, in the exercise of what he conceives to be his duty, undertakes to impart the required movement by preparing and adjusting the whole machinery, setting it in motion with his own hand, and even prescribing the law by which that motion was to be governed. Whether these States are in or out, is no longer a question, when the rupture of their connections, and their own incapacity to restore them without the direction of the ultimate sovereign, are admitted elements in the case. All that remains is to decide where this transcendent power is lodged, how it is to be exercised, and who it is that is to speak this chaos into order, and to recreate from this admitted anarchy, the future organism that is to claim its place in our system.

"The proclamations assume that this high and imperial function is a purely executive one, and that on the ground of the constitutional obligation on the part of the United States to guaranty to every State in this Union a republican form of government, and the duty of the President to see that the laws are

faithfully executed. It is only on the hypothesis either that this officer is—not in the modest language of Louis XIV, the State—but the United States, or that this executory agreement is in the nature of a law, which may be enforced by the instrumentality of the sword, and without the exercise of any discretion on the part of its minister, that the case can be claimed to fall within the province of the executive department. The former of these views, which seems to find support in the argument of the gentleman from New York, I shall not trouble myself to answer. If the latter were true, and the duty itself a purely ministerial one, the claim would be unquestionable. It is so far from being true, however, that it would have been impossible even for Congress itself to provide in advance by any general enactment, for the many different cases that might arise to demand its fulfillment. They have not even yet decided what is to be considered a republican form of government, within the meaning of the clause, or how it is to be erected in case of the overthrow of any of the existing State governments. They have endeavored, it is true, to provide for these cases, but have been met by the argument that it would be time enough to cook their hare when it was caught, or the objection that the Executive had a better ‘plan’ than their own, which was in itself a confession that it was a matter of doubt and discretion, and anything but the performance of a ministerial duty. That plan, like the present one, involved no less a task than the reconstruction of a State from its very foundations, and the declaration of the law that was to govern in the prosecution of that work. In the former case, the power was conferred on a tithe of the voters who might take the oath of allegiance, and forswear the institution of slavery. In the latter, it is confined to the loyal men who had voted before, without reference to their numbers, and without any definition of the term, although it was clear that there was scarcely a loyal man in those States except those who were excluded. But will anybody say that the proclamation of the fundamental law of a State is an executive function? If there be any higher act of sovereignty than that which founds, or reconstructs a State, and gives or denies the elective franchise to any of its citizens, I do not know what it is. The man who makes the elector makes the laws and the magistrates, and is practically in the enjoyment of a dictatorial power. There are occasions, in the extremity of a State, when such a power may be necessary for its safety. Nobody has questioned the right of the Executive to govern the conquered territories—and that by the rigors of martial law—in the recess of Congress, and the absence of any other rule. No man has

gone further than myself in the support of measures which were necessitated by considerations connected with the public safety. I can very well recollect the time when gentlemen upon the other side were startled by the boldness of my claims in favor of a *quasi* dictatorial power in the Executive, and Democratic presses held me up as the champion of absolutism. Then, however, it was claimed but as the extreme medicine of the State, and not its daily bread; not to found an empire, but to save one. Thank God! the occasion for these things has passed away. It is not longer permissible to resort to the war power for apologies for extreme measures, and particularly such as are obviously unnecessary. But there never was anything in that power to warrant the erection of a State by executive proclamation. That is an act of legislation that goes far beyond any example in British history, even in the complying times of Henry VIII, when a servile Parliament made itself alike memorable and infamous by giving to royal proclamations the force of law. I trust we are not yet ready to emulate and even improve upon this example. I do not relish the exhumation from the repositories of the dead past of such engines of arbitrary power as these. I would as soon think of going to the Tower of London, to borrow the material appliances that are still there to testify of the tyranny and barbarism of the buried centuries of England. There is a flavor about them that is neither pleasant nor wholesome. If the work done through such instrumentalities had been in all respects what my own judgment would have approved, I should have hesitated long, on grounds of principle, even in the absence of any intended interference with the rights of this body, before I would have given my sanction to a precedent so fraught with mischief for future times. I would not even mar the pedigree of the returning States by allowing a bar sinister in the escutcheon of any of them, and do not care to be associated in history as a member of the Thirty-Ninth Congress of the United States along with the dishonored council of the sixteenth century, that betrayed the rights of Englishmen by abdicating its powers in favor of such claims as these. Crown lawyers have only defended them in high prerogative times, as an expedient made necessary by the unfrequency of Parliaments. There is no such apology in these cases. The very object, as confessed by the undisguised hurry to bring these new governments to our doors at the opening of the session in full panoply and compact array, was to anticipate the action of Congress in the premises. The present Executive, like his predecessor, has his plan of organization. The proclamations disclose it. He had a right, of course, to his opinions. He was,

however, a Southern man, and a citizen of one of the offending States. He was not likely, therefore, to think in the same way precisely as the twenty millions of the loyal States who had fought this great battle. He had never, if I mistake not, declared himself very strongly against slavery, except so far as it was in antagonism with the Union. His local associations and prejudices of education were *à priori* almost sure to arrest him at that point where a guaranty of the civil rights of the enfranchised class should be demanded. He had been loyal and faithful under great trials. That fidelity had made him the choice of the Union party of the North for the second office in the Republic. The bloody hand of treason opened the way for his succession to the first. It had become his right to advise, and his opinions were entitled at all events to the highest possible respect, but the mode of enforcing them was pointed out in the Constitution. It was only through Congress that he could properly make them known, and the very relation in which he stood toward the loyal States seemed to make it peculiarly appropriate that he should take no step without at least conferring with their representatives. He has not chosen to follow this course. He has preferred to treat directly with the rebels themselves, or to dictate as a conqueror, such terms of restoration as were agreeable to himself. I will not say that this was done because he apprehended the existence of a different opinion here, but the effect is, that the opinion of the Executive, hurried into act in advance of our assemblage—supposing such a difference not impossible—is thus staked against the will of the representative body. It is the sword of Brennus flung into the scale. It looks to me—nay, in the light of the message it is—a challenge to Congress and the free North, upon a question of jurisdiction in a case where their exclusive cognizance is not even open to dispute, which we cannot afford to decline, and upon the acceptance or refusal of which will depend the determination of the point whether, in the face of an executive edict, an opposing legislative will is possible.

"If a claim of this sort was stoutly and successfully resisted by our ancestors, when asserted by the Tudors and the Stuarts, how are we to excuse ourselves to posterity for surrendering it now to a mere temporary Executive of our own choice, with powers so limited and so accurately defined? I trust we have not become so habituated to the exercise of a prerogative like this, as to have forgotten that there are boundaries, which in a state of peace no department of the Government can safely be allowed to pass. The danger throughout—the one prefigured by some of the leading spirits of the Revolution; the one fore-

shadowed when Patrick Henry declared, 'Your President will be a King'—has been in this direction only. The vast discretion necessarily lodged in the Commander-in-Chief in times like those through which we have just passed, the extreme prominence of his position, and the enormous influence arising from the control of an immense expenditure, were almost sure to give to that officer a greatly prepondering weight, and to make the world—accustomed only to royal wars and royal rule—believe that it was the President alone, and not the Congress or the people, who had saved this nation, and whose business it was to restore it in all its parts. And therefore it was that the same claim of power in the proclamation of December, 1863, provoked no animadversion here, while the details of the Presidential plan were subjected to the severest criticism; and no special complaint was made when the will of the law-making power was disregarded and overruled. And therefore it was, too, that the House bill failed on a second trial. And for the same reason, it is now, that the press and politicians of the nation, instead of controverting the power of the Executive altogether to meddle with the reorganization of these States, and denouncing the attempt on his part as a clear usurpation, have only complained in whispers and with 'bated breath,' that he did not extend the right of suffrage to the black man, while even so intelligent a personage as Robert Dale Owen, has referred to this work of reconstruction as the greatest of the many difficult and responsible duties which the termination of the war has devolved on *the new President*; and even the fierce Democracy itself, which made the night of the rebellion hideous with its ululations about arbitrary power, is either smitten dumb with admiration, or swells the peans of triumphant treason with a chorus of hallelujahs, in honor of the wisdom that surprises and anticipates its wildest hopes. It seems, indeed, to have been well-nigh forgotten throughout the country, as well as at the other end of the Avenue, that we have a Congress, which is, under the Constitution, the law-making power of this nation. People inquire only what does the President intend; while the Associated Press ministers to their curiosity by daily bulletins, reporting every phase of the imperial pulse, as though it were watching by the bedside of royalty, and kindly informing us all of the precise terms on which the President has determined to readmit the traitors on this floor. The time has now come, however, to rectify these errors, and to assert and maintain the rightful jurisdiction and powers of this body, if they are ever to be asserted again. With the highest admiration of the constancy and heroism of the present Executive under the severest trials,

and with every disposition to support his Administration so far as fidelity to my own high trust will allow, I cannot consent that a question like this, in which the interests of so many generations are involved, shall be withdrawn from the people of the loyal States, who have suffered and sacrificed so largely, and settled by the decision of any one or even seven men, no matter whence they come, or what positions they may hold. No more can I allow myself to be instructed here, that while the power of settling the terms of readmission is with the President, I have no jurisdiction as an American legislator, except to register the acts that he has done, and then humbly inquire as a member of this House only, whether the candidates who present themselves for admission here have complied with the mere formalities which his Legislatures have prescribed. It is here only—in these Halls—that American liberty can live. They are her inner sanctuary—her holy of holies—her strong tower of defense—her last refuge and abiding place. Here are her altars, and here her priesthood. It is only here, too, that my own great State, whose blood has been poured out like rain, and whose canonized dead are now sleeping on every battle-field of freedom, has been called into counsel during the last four years. She has no voice elsewhere. On the theory of the President, and the results of his experiments, she has given out no uncertain sound. She bids her sons whom she has placed on guard at the Capitol in this hour of the nation's trial, stand faithfully—as did her heroes in the bloody trench—by their trusts as Representatives, and resist with jealous watchfulness every attempt from whatever quarter, to encroach upon the just powers which she has delegated to them. If the performance of this duty should involve a difference with the Executive of her own choice, while she would deplore the necessity, she will expect her Representatives to take counsel from those who sent them here, alike unawed by the frowns and unseduced by the blandishments of power. I dread the conflict, which is not a new one in the world's history, but I cannot choose but meet it when it comes; and I have a trust that we shall yet be able to discuss the great question of the times, and to settle it, too, without prejudice, and in utter oblivion of the fact that the Executive has any theory on the subject.

“It has been said, however, by way of quieting the public fears, that these plans were merely experimental, and that no harm could come of them, because, under the Constitution, Congress must be the judge at last of the qualifications and eligibility of those who might present themselves for admission to seats in that body. The work accomplished, we are now

awakened to the fact, that the power referred to here is only that of each House acting separately upon the qualifications of its own members. While the Executive assumes the right himself of founding new governments, by a new law declaring who shall vote, and settling by telegraph the terms of their constitutions, he is pleased to claim, in his recent message, for these creatures of his own—other but still the same—with their vitalities repaired at that fountain only—the right to resume, of course, and without inquiry into his work or theirs, the places which, by an ingenious fiction, they are supposed to have before held in both branches of the national Legislature, making, as he says, 'the work of restoration thereby complete;' while we are instructed in terms of unusual emphasis, that *then* it will be for us, 'each of us for ourselves,' to proceed to judge of the smaller matters of the law in regard to 'the elections, returns, and qualifications of our own members.' These instructions are, perhaps, somewhat unusual, and possibly not that kind of information precisely to which the Constitution refers, but I do not quarrel with them on grounds of etiquette, even though the advice may seem gratuitous, and the jealousy of a British Parliament might have regarded it as a breach of privilege. They are not, it is true, exactly in accordance with the tenor of the authorized report of Mr. Stearns, which did convey the opinion that we might 'check these new governments at any stage, and oblige them to confess their errors,' unless it was intended to affirm that power only as the special prerogative of the Executive himself. They are, however, the official utterances, and the apology assumes, of course, that there is no question of legislation involved. With this interpretation of its meaning, there is nothing left to Congress, but to register the edicts and ratify the work of the Executive. Taking it, however, to be otherwise, they are still not less obnoxious to objection. It may be conceded that States have been admitted here without any precedent legislation though none, I think, where they were organized under the direction of the military power, and none, certainly, without the concurrent vote of the two Houses. By those, moreover, who think that these States were never out, it will be insisted, in accordance with the executive idea, that they want no recognition, and the refusal of Congress to admit their members will be only regarded as a denial of right. But the mere negative of either House upon the question of their admission, is a power greatly inferior to that which presides over their organization, and prescribes the law by which the formative process is to be regulated—just as inferior as the veto lodged by the Constitution in the hands of the Executive,

is to the initiative of the Legislature. The builders will work according to that law, and as it prescribes, so will the structure be. As we sow, we must expect to reap. ‘Men do not gather grapes from thorns, or figs from thistles.’ Thus, if a privileged class is to elect the delegates, their work will be in accordance with the principle of their origin, and will be submitted—if submitted at all—for approval or rejection to the same parties who inspired it; and if the government so framed is to be recognized because it professes to be a representative one, the right of declaring its whole fundamental law might as well be accorded to the Executive, as that of declaring a part of it, and assembling a convention to alter or amend that part. There was no occasion, however, for experiments of this sort, whose only tendency is to forestall the action of the legislative power, or to bring about a mischievous conflict between the two branches of the Government. If this is properly a legislative—and not an executive function—as nobody can successfully deny—the President has his veto, at all events, upon the action of Congress. He cannot invert the order, and change the constitutional relation, by initiating an act of legislation, and leaving to Congress only a negative voice thereon, particularly in a case where the voters named by himself are expressly endowed with the power to restore the State to its constitutional relations with the Federal Government, and to present such form of government as will entitle it to the guaranty of the United States, and where, of course, it is expected that their work shall be conclusive.

“It will be said, perhaps, in reply to all this, that the object here was not to found a State government, but to allow the legal voters of the old *régime* the privilege of altering and amending their original forms of government, so as to restore them to their constitutional relations, and entitle them to the benefit of the guaranty.

“It is not to be disputed that these are a part of the objects stated in the proclamations. I will not say that this was done by way of protest against the logical conclusion from their premises, from the whole character of the act itself, and the assumption of power which it involved, that the measure was a revolutionary one—as Governor Orr admits it to have been. I shall be excused, however, for suggesting that it was unfortunate that the law adviser of the Government—perhaps its political Nestor—should have overlooked in this a departure from his own premises, that could scarcely have been excused in a junior pleader in the Northern States. He had obviously forgotten the recital on which these proclamations rest—the postulate that

'the revolutionary progress of the rebellion had deprived these States of all civil government whatever,' and the declaration that the purpose of these conventions was to enable the loyal people of these Territories, not 'to alter or amend' their constitutions, but 'to organize,' or construct anew, where the original government was admitted to have perished. Whenever he shall be able to explain how a constitution can exist in a Government that has been altogether destroyed, or why he should have treated the process of *organization* as a mere process of *repair*, I shall be glad to hear from him. The man who reaches this conclusion from his premises, will have 'no narrow frith to cross.' I hope I shall not be considered uncharitable, however, in suggesting that all this inconsequential logic looks to me as if it was the effect of an unhappy struggle to escape the consequences of a doctrine, which was felt to be necessary in order to raise the power in the President, and is then discarded, after having served that use, in order to remove the case from the jurisdiction of Congress. It will require something more, I think, than either the subtlety of a northern placeman, or the exploded metaphysics of a Kentucky statesman, to reconcile any one step in the action of the Government, with the idea of the continuing existence of the States.

"In the same spirit, however, apparently, that prompted the softening down of an organization into a mere question of alteration and amendment, there is a studied avoidance of a phraseology that has found acceptance here, without even provoking criticism. We called this heretofore, in our simplicity, by the harmless name of 'reconstruction.' The Attorney General protests, like Bardolph, 'by this light I know not the phrase,' and straightway our nomenclature falls into disrepute. Well, I am ready to maintain, if necessary, in the language of the same dramatic personage, that it is 'a very soldier-like word, and of exceeding good command.' It is the merest hypercriticism to object its application to the adjustment of our relations with the revolting States; but whatever difference there may be here, it is impossible that there can be any dispute among scholars in regard to its precise aptitude in describing the reorganization of a State. The question is too big, however, to be settled in this way. If anybody prefers the word 'restoration,' I have no objection apart from its historical significance. It was the phrase used on the return of the Stuarts. I hope it is not ominous. Charles II came back without conditions, notwithstanding the efforts of Hale, who endeavored to secure them, but was put down by the assurances of General Monk. (I hope we are to have no General Monk in this case.) Bishop Burnet

says that this omission was the cause of all the errors of his reign, which it required the Revolution to cure. I know that there is a confidence here, and a longing in some quarters, not unlike that of the Jacobites of England, for the return of the self-exiled royal family of the South, but I trust we are not about to lay the foundation for another revolution by the same mistake. Apart from this, I repeat that I am indifferent as to the word. It is sufficient for me that it implies, if not destruction, at least derangement—disturbance—displacement. The revolting States have, by a new law, deflected from their orbits, gathered round a new center, and ceased to compose a part of our system, or to be obedient to its law. They want renewal or regeneration. They require to be brought back by an interior adjustment that will reinstate the law that has been broken. They are in the system, and compose a part of it only *de jure*. Nobody can say that they are there in point of fact, because that would contradict not only our knowledge, but our senses. Something, it is admitted on all hands, must be done to re-establish their relations with the Union. They cannot do it themselves. Nobody pretends that by the mere repeal of their secession ordinances they can resume their places here—as they might do if they have not withdrawn—in virtue of their original title, and with all their rights and privileges unabridged. Their Legislatures have been even forbidden to assemble. The Executive thinks that by their act of treason the citizens consenting thereto have forfeited their highest political right—that of self-government—and that to this extent their constitutions—not as they stand now, but as they stood before the rebellion—are practically abrogated. He thinks, too, obviously, that by their abdication or dereliction—as in the case of James II—the sovereignty has lapsed—but not to us. A committee of the last House insisted that it returned to the conquered people. He claims it for himself, and accordingly sets aside their Legislatures, Governors, and judges, reconstitutes the body-politic, declares who shall be its members, and appoints a provisional governor to keep the peace, and call the privileged parties together to organize a new government. And all this is called amendment, upon the ingenious suggestion that they are to build on the substratum of their dead constitutions! No cunning phrasology—no artifice of words—however, can change the nature of a thing. The re-enactment of a part of an abrogated law, either with or without addition, is no amendment. They might as well have taken the constitution of Pennsylvania to work upon, and in either case the product would have been a new constitution.

"But why so studiously insist on the avoidance of other phraseology than this? Because, as it is urged, although the people of a State may destroy their government, it still subsists *in gremio legis*, or, in the language of the message, following that of an ingenious southern Governor, 'in abeyance,' or, as lawyers would phrase it, in the clouds—on the charitable hypothesis that suicide is impossible, because it is forbidden, and, therefore, by a pleasant fiction, all those pregnant acts that have scarred a continent with fire, and covered it with ruins, are simply void, and to be ignored as nullities. And this we are now informed by the Executive is 'the true theory.' It is undoubtedly the convenient one—for the traitors—because it furnishes no solution of the great problem of the times, except in the surrender of all control over the rebellious States, and the restoration of their people, without conditions, and with absolute immunity for all their crimes. Why it is the true one, he has not vouchsafed to show. I know, of course, that the high functionary who dispenses the patronage of such an empire as this is not always expected to render a reason when he chooses to dogmatize, and that, in the view of but too many of the leaders of public opinion, it is impossible for such a man to err. With a practice, however, so entirely at variance with this theory, and an admission, too, in the same breath, that 'the policy of military rule over a conquered territory'—the very rule under which all that region has been governed, and all these States reconstructed during the recess of Congress—'would have implied that, by the act of their inhabitants, they had ceased to exist,' it would not have been unreasonable to expect an explanation of the course that has been actually pursued within the jurisdiction of independent States, that enjoyed the rare advantage—unhappily denied to our race—of being incapable of sin, and equally unobnoxious to the penalty of death. The only answer that he could have made would have been that the doctrine, although good as a theory, was good for nothing else, because it would not work, and was utterly inadmissible in practice. The State, however, in the judgment of the President, still lives, with only an 'impaired vitality,' although its government has been destroyed. It is dead, to be sure, as Lazarus: in no mere trance, where the vital forces are still holding the organization together, but with all its elements putrescent or decomposed; but then there is a power in the Executive, beyond the kingly touch that purged the leprous taint from the blood of the believing, that can awaken it from the sleep of death, lead it forth in its grave-clothes, tide it safely over the frith of a four years' rebellion, and bridge over the unfathomable gulf that during all this time has divided it from

the living! Yes, while it is admitted again and again that the old State governments were lost beyond even the means of self-resurrection, this modern Phoenix is supposed by some mysterious conveyance, by some metempsychosis unknown to the philosophers of Greece or the priesthood of the Nile, and only rivaled by the imposture of the Grand Lama himself, to have inherited the vital breath of the defunct State government, though that State government—dead to us, if not dead altogether—has transmigrated into the confederacy, and now lies buried among its ruins. But let us examine this new revelation.

“If the acts done by these States had involved only a question of excess of power, as in the case of a law enacted by a State Legislature in violation of the fundamental law, this view of the case might have derived support from the doctrine that prevails in such cases. Here, however, the fundamental law itself was changed by the very power that enacted it. Whether rightfully or not, in view of their Federal relations, is not now the question. It is sufficient that they did, in point of fact, erect new governments upon the ruins of the old. And this, although it had been expressly forbidden, could not, in the nature of things, be prevented. There was nothing in the Constitution of the United States that could hinder the perpetration of an act either of treason or suicide. They might have allowed their governments to perish by omitting to supply their integral members, or they might have withdrawn—as they did—from the Federal connection by entering into other alliances, disclaiming its authority, and refusing to obey its law, or take any part in the administration of its affairs. All this they did, and more. It was the act of the people themselves. There was no interregnum. They carried their constitutions into their new relations—changed, it is true, in this particular, but still republican in form. They might have changed them into monarchies. Their new establishments are now overthrown. But how is this to revive others that are admitted to have previously perished? Nobody pretends that it could. The proclamations themselves admit that they have been left without governments, and without means of recovery except at the hands of the Executive. Can it be truly said, then, that any portion of the original structure was rescued from the general wreck? If there was, then how much, and who shall declare it? True, one of the objects stated is to enable them to restore themselves. But does anybody insist that they can do it? Is this consistent with the grounds on which the proclamations rest? If they can, what is to be said in apology for executive interference? If they can, what is to be said of the other object declared in these instruments, which is

'to enable the people of those States to present such forms of government as will entitle them to the benefit of the constitutional guaranty, by restoring them to their constitutional relations, and their people, therefore, to protection from invasion, insurrection, and domestic violence?' What does all this mean? If they were States in the Union, it required no process of organization or restoration, to confer on them the advantage of these rights, because they were entitled to them already by the very letter of the Constitution. It is because they are not—because they have been 'deprived of all civil government whatever'—that the President proposes to make them so, and to endow them with these rights anew, by reannexing and bringing them again into the Federal connection—from which they have been confessedly detached—upon a new title, by his own act, and without any agency of ours. It is a confession of outlawry, which no legal acumen, no ingenuity of phrase, can explain away, and it is worse than idle to quibble upon forms of expression in the face of such an admission.

"But supposing these State constitutions to be still in force, as they existed antecedently to the passage of the several ordinances of secession, on the ground that all that has been enacted since in violation of the Federal law was simply void, what then was the occasion for any amendment, and whence does the President derive his authority to interfere at all, and to change the law as it stood before, even on the subject of amendments? In that case they may return, of course, whenever they think proper, without any legislation whatever. Why await the repeal of an act that is absolutely void? What is to prevent them from coming back with their constitutions as they are? Taking it to be a question of amendment only, it is clearly in their discretion to amend or not; and if they are still in the Union, there is no power here or elsewhere to say what amendments they shall make, or that they shall not resume their places here without alteration of any sort. The executive branch of the Government admits, however, that something must be done to restore these outlaws to their original *status* in the Union. The war has resulted, as we agree in thinking, in the emancipation of the slave, and the destruction of the elective franchise along with the government; and these things must be in some way acknowledged. They are unquestionably forfeitures; but should they refuse to recognize them, that refusal would, on his hypothesis, constitute no sufficient reason for excluding them. The question of the effect of the proclamation of freedom is one that belongs to the courts, and you cannot draw it within the jurisdiction of Congress or the President, except by assuming that

these States are out and must be formally readmitted. In that case you may prescribe terms. Without that you must open when they knock, without inquiry as to their constitutions, with which you will then have nothing to do. To stipulate for the acknowledgment of these things, is but to treat for their readmission on that basis, and amounts to no more or less than a compromise with a belligerent; and they may reject the conditions, because you can impose no terms of amendment upon them.

"Taking it, however, that their constitutions do require to be amended for these purposes, how is this work to be done? Not by executive direction certainly. The President has no more power to set up a new class of electors in South Carolina than in Massachusetts. There is but one way, and that is in accordance with the law which they prescribe themselves, which must have survived if any part of their constitutions did. The process which ignores that law, as the proclamations do, is radical and revolutionary, and is no less in effect than absolute reconstruction. The sovereign power of the people may act in this way undoubtedly, but when it does there is an end of the existing government.

"A word now as to the answer that all this was intended only to allow to the people the privilege of doing this work themselves.

"If the object had been only to keep the peace for the purpose of allowing these people to decide whether they would erect a new government, and apply for readmission into the Union, nobody would have complained, although the necessity for interfering in this way was conclusive that they were not in a condition to exercise these rights, and that the act was not a voluntary one. But they were not asking the privilege of coming back again. It was not essential that they should come, until they were ready for it. It was essential that when they did, it should be of their own pure volition. To compel it, was as impracticable as it was undesirable. And yet the essence of the proclamations is a command. They are not permissive but imperative. The people might not be ready, but that made no difference. If any of them failed, it was a default. The right to vote was not a privilege, but a duty. The white men, who were loyal and would take the oath, must reconstruct their governments at all events. It is idle to say, therefore, that this was a mere indulgence to their prayers. It went in advance of the wishes of the people, and this is the construction placed upon it by the highest intelligences of the South.

"And now as to the way in which the power claimed by the Executive has been exercised.

"If the function were a purely executive one, it could not go, of course, beyond the mere permission for the assemblage of conventions, and the pledge of protection to the citizen in the exercise of this privilege. To favor classes—to proclaim that this or that citizen should not be allowed to vote—was something more than an executive act. In the case of a civil dissolution and the absence of all government, such as the proclamations admit, all were, of course, remitted to that natural equality which is recognized in the Declaration of Independence, and had only been suspended by force of the civil institutions which had then ceased to exist. The right of the negro, whether previously bond or free, was in that condition of things, as perfect as that of the white man, and the latter had no more right to say to the former that he should not vote, than the former had to hold the same language to him. All privileges of caste or complexion that existed under their old constitutions were gone along with the constitutions themselves. And this is in accordance with the doctrine everywhere received throughout this nation, where all limitations upon this right, except those which depend on condition only, are the results of express enactment. It was no question, therefore, of grace or favor or indulgence, and it cannot, of course, be said in excuse for the prohibition, that it was not competent for the Executive to confer the privilege on this particular class. It was not his to confer on anybody, either white or black. If he had left the election to the citizens who owed allegiance, paid taxes, and were subject to bear arms, they must have voted without distinction of color. The only question was—not whether he could confer it—but whether he could take it away. He has taken it away from others—from all who were not qualified under the old constitutions, and from all who are disloyal, or refuse the oath to support the laws and proclamations in regard to slavery. The old governments with their black codes, which were the fruitful nurseries of treasonable sentiment, and have destroyed themselves by hurrying their people into the rebellion, are allowed to furnish the rule and standard of electoral fitness, on the hypothesis that there is something left of them that still lives, like the tail of a defunct reptile after the very life has been crushed out of its body, and are only to undergo alteration and repair at the hands of the same cunning workman who had destroyed their machinery altogether. It is the same class precisely that is to renovate the work. True, it is with the condition of loyalty, and a new oath, superadded. But what are

these? Who are the loyal? Not certainly those who committed treason against the nation by waging war against it, or giving aid and counsel to its enemies? But if they are excluded, who are to be the voters, when the only class that proved true to its allegiance, is precisely the one which was excluded under the old *régime* that it is now sought to restore? How many of the original voters, beyond those who were driven into exile, have stood by the old flag in the hour of our trial? Was it a majority—was it even a tithe? Can there be as many such men found as would have saved Sodom from destruction? We know that there cannot, because we know that they would not have been tolerated on southern soil. We know it, too, from the declaration of the Governor of Virginia, that unless the law that disfranchised the traitors only from January, 1864, was repealed, there would not be men enough left to organize the State. And is it seriously proposed that the power of erecting governments, in order to enable these States to resume their places in the Union, shall be vested in a score of men out of a population counting by millions? But how is the question of loyalty to be determined? Not by the oath, because that is merely cumulative, and is not offered either as a test, or by way of purgation for past offenses. If as a test, the word might as well have been omitted altogether. How then? Is there a virtue in the amnesty which works not only oblivion for the past, but converts a pardoned traitor into a loyal man? Is it by judgment of law on conviction of crime? Is it by attainder on proclamation by the Executive? Is it by a trial *in pais* or by compurgators at the hustings? If the old constitutions are still in force, either by construction of law or by virtue of the proclamations, the exclusion even of those who may be impeached of disloyalty, looks amazingly like the forfeiture of a legal franchise, without judgment and without law, and is too high a power to be exercised by any other than the sovereign.

"But there is another condition superadded, by way of abridgment of the right; and that is the exaction, even from the loyal, of the oath to support the proclamations and laws relating to slavery. No friend of the country will of course object to any wholesome limitations upon the privilege; but if it was not competent to the President—not to confer, but only to permit it—to the black man, what authority was there to limit it in this way to the white man? Neither the Constitution of the United States, nor that of any of the States, has ever required an oath of this sort from the voter. If he could impose this, what was there to prevent him from swearing them to the observance of all acts of Congress and all proclamations,

or requiring them to swear that they had never given any aid or countenance to the rebellion? If he could disfranchise the unconvicted traitor, what was there to prevent him from enfranchising the loyal man who has become free? But what is the security which it furnishes? How long is the obligation to endure? Did it bind the members of the conventions? And if these bodies have defined the qualification in a different way, are the voters now free?

"The programme is in effect to recommit these governments to the hands of the very men who hurried them into the rebellion, upon the sole condition of a new obligation of fealty, after having just broken a previous one, and to abandon the field to the conquered as soon as it is won! Was ever such a *dénouement* to such a drama? But is there anybody in the loyal States, who is willing to release all the securities, all the rights and advantages acquired by the war, and prescribe no terms to those whose lips have just been dyed with perjury, and whose hands are still dripping with the blood of our butchered sons, except a renewal of their already broken vows, which they will make voluntarily, and then claim to have no binding force because they have been made under a sort of duress, on the ethics taught by a distinguished casuist of Maryland? What kind of a test is this for a statesman? Would any rational Government on earth be content with such a caution? Who does not know its utter worthlessness? What is it but the flaxen tie that bound the wrists of the Hebrew champion? What is its value, in view of the events of the rebellion that have now passed into history? How is our past experience? Have these people ever kept faith with us? Did it hold any of the rebel leaders who filled employments either civil or military under the Federal Government, or under those of the revolting States? Was not perjury exalted into honor of the highest chivalric type; children taught by their own Southern mothers, that they were under no obligation to keep faith with Yankees, and that they might swear and forswear themselves again and again, to save their persons or their property; and the very highest species of the *crimen falsi* canonized even by the tender and admiring regards of Northern generals and Northern statesmen? It may be safely assumed, as a general proposition, that those who were most forward to abjure their sworn allegiance here, will be the first to violate their new-made vows, by swearing themselves back again into legislative honors and governmental favors. But will you consent to turn over the few Union white men, and your thousands of faithful allies among the blacks, to the tender mercies of these unconverted and unrepentant rebels, and bring

them back again into these Halls, on pledges of fidelity that amount at last to no more than an engagement not to repeat an experiment, against which you will now want no other security than the recollection of your power? If you are wise you will not be content with any assurances that are either purchased by interest, or extorted by necessity. You will render it impossible for them, to deceive you again, by refusing to trust them, until they shall have re-established their title to your confidence. Security is more important to you than punishment, ay, even than the demands of justice. Others may do as they please, but as for me, I must beg to be excused from giving my faith to these new-fledged neophytes—these unbaptized renegades—until they have stripped to the skin, and bathed themselves thoroughly in the waters of regeneration.

"But, supposing this guarantee be a merely executive function, how does the manner of performance square with the object sought to be attained? The obligation is to assure a government that shall be republican. The meaning of this is that it shall be a government of the people. The process adopted, in direct contravention of the principles of the message, is to lodge the power in the hands of a privileged class—the same that held it before—distinguishable only by the accident of color, along with a disloyalty to the Union that was almost universal, and composing, in some instances, a minority of the whole population. Does this look like a fulfillment of the obligation, or even squint in that direction? The form, it is true, may be republican, because it looks to representation by election. But that is not the test. If it were, every constitutional monarchy in Europe might be brought within the category. It is the distinction of classes—the permanent limitation of the right of suffrage to a favored few—that makes the difference between the aristocratic and republican forms, and there is none other. In this case, the right is confined to the loyal white man who will take the oath. This, however, if not an oligarchy or government of the few, is at least an aristocracy or government of classes, and furnishes a perfect exemplification of just that species of legislation, which is so earnestly reprobated in those passages of the message, where the President informs us that 'this Government springs from and was made for the people;' that 'it should, from the very consideration of its origin, be strong in its power of resistance against the establishment of inequalities;' that 'monopolies, perpetuities, and class legislation are contrary to the genius of a free Government, and ought not to be allowed;' that 'here there is no room for favored classes or monopolies;' and that 'we shall

fulfill our duties as legislators, by according equal and exact justice to all men, special privileges to none.' If I have found occasion to commend his practice, at the expense of his theory, upon the question of State sinlessness and State immortality, subscribing as I do most heartily to these axioms of political science, I shall feel myself compelled to adjust the account, by following his advice in opposition to his practice here. 'Class legislation,' and 'special privileges' of a sovereign character, are the distinguishing features of his plan, and it is, therefore, by the erection of an aristocracy, that the guarantee of a republic is to be made good!

"Whether these States be in the Union or not, it is conceded by the Executive, in the effort to provide them with republican governments, that they are now without them; and this, I suppose, for the reason that they have no governments at all. The same result, however, would have followed from the change in the condition of the slave. A Government that not only denies to a majority, or even a large portion of its free citizens, the privilege of any share in its administration, but rejects their testimony as witnesses, interdicts to them the acquisition of knowledge, or refuses the advantages of the marital relation, is not republican, and the men who have made these laws, and insist on maintaining them now, will never make it so. Mr. Burke remarks that, taking the State to mean 'the whole commonwealth, with all its orders, and all the rights appertaining to each,' 'to be *under* the State, but not the State itself, or any part of it—that is, to be nothing at all in the commonwealth—is a condition of civil servitude by the very force of the definition. *Servorum non est respublica* is a very old and a very true maxim. The servitude that makes men subject to a State, without being citizens, may be more or less tolerable from many circumstances, but these circumstances do not alter the nature of the thing.' And this he regards as a modified form of slavery; while 'the exclusion of whole classes of men from the higher or ruling part of the commonwealth, as in the case where a hereditary nobility possesses the exclusive rule, is only held to imply a lower and degraded state of citizenship. But even there it is only the office, and not the franchise, that is denied to the subject.'

"'Our constitution,' he continues, 'was not made for great, general, or proscriptive exclusions. Sooner or later it will destroy them, or they will destroy the constitution. In our constitution there has always been a difference between a franchise and an office, and between the capacity for the one and for the other. Franchises are supposed to belong to the subject as a

subject, and not as a member of the governing part of the State. The policy of the Government has considered them as things very different; for when Parliament excluded by the test acts Protestant dissenters from all civil and military employment, they never touched their right of voting for members of Parliament, or sitting in either House'—both these being treated by him as franchises of which the subject could not be deprived. In a republic, however, there is no proper distinction between the governing part and the subject, and the office, of course, would stand on the same ground as the franchise.

"An American statesman of the present day would say, perhaps, that the elective franchise, the most important of them all, is not the property of the citizen, because it is not a natural right, but a political one. I have heard such language here, even on this side of the House, again and again. I am too dull to comprehend the distinction. I take it that all governmental agencies, all political contrivances and privileges, are but the machinery for the protection of the great natural rights of humanity, which protection is admitted by the Declaration itself to be the only legitimate object of all government. Why are our institutions free? Because they allow to you and me the privilege of governing ourselves. Why am I a freeman? For no other reason than because I am armed with the ballot for my own protection as a citizen. Strip me of that and I am at your mercy. You may deal gently with me, it is true—and so might the Sultan of Turkey—but that makes no difference. I am still the slave of your caprice, and my rights and happiness may depend, like your temper, on the state of your digestion. You may designate this franchise by what name you please, but you cannot refine it away by verbal distinctions or scholastic subtleties—by calling it political or giving to it any other nomenclature. You might as well deny me all the rights of a citizen, because they are all political, as deny me that one—the most important of them all—which is essential to the protection of the residue. Nor can you pilfer it from me by the jugglery of assigning to it the distinction of a prerogative or privilege. I know no prerogatives here, and no privileges that are not, or at least ought not to be common to us all. The message itself reprobates a subterfuge like this, when it asserts the great republican idea of 'equal rights for all, special privileges to none.' No: you must either settle the principle that this is a white man's Government alone, or you must share all your political rights with men of all complexions who inhabit among you. The Democrats, *par excellence*, who love slavery for its own sake, and do not of course favor the doctrines of either

liberty or equality as to the black man, accept the alternative that this is a white man's Government—as does the President himself in his one-sided argument with the dusky committee that waited on him a day or two ago, in declining to answer as to South Carolina, assuming that they are not a portion of the people, and advising them to emigrate from the country which he had previously declared to be their own—and are therefore consistent and logical in denying the suffrage to the negro, as they are in favoring the policy that ignores the war, and seeks to rehabilitate the aristocracy of the South. I wish I could say as much for the Union party as a whole on this floor. Gentlemen of that faith are without apology when they agree with them in either.

"The proclamation has made the negro nominally free. He counts in the representation. He pays taxes, and must bear arms if necessary, and he has done it. No sensible man now pretends to doubt that he is a citizen, or can doubt it in view of these considerations. The interference of the Executive is put expressly on the ground of the obligation of the national authority to secure a republican form of government to each of the States. To effect this, it is essential that a majority should be allowed to enjoy the political right of governing, and that all should share alike in its direction. To put any class *under* the State, would be to deprive them of the rights of citizens, and to reduce them, in the words of the authority just cited, to a state of civil servitude. It is essential, moreover, that it should rest, in the language of the Declaration, on 'the consent of the governed.' An establishment that does not conform to these principles is not republican, whether the power be lodged with the *oligoi* or the *aristoi*. No matter as to its forms. We are not to be cheated by appearances or names. It was something more than the mere form that the Constitution intended to secure. And yet the process here ignores all these things, and rests either upon the dimmest perceptions of free government, or upon the southern theory that the negro is not a man, or that this Government was only intended for white men. If the proposition were to exclude all men of Celtic blood, what a sensation would it not produce among the Democracy? If the difference, however, is only against the African, consistency would require that he should also be excluded from the enumeration hereafter. With the end of the 'divine institution,' the three-fifths clause, which stipulated for a representation—not *of or for* him, who was not then a man—but for his master, has ceased to operate. If the freed slave is now a citizen, he has a right to all the privileges, as he is confessedly subject to all

the duties which that relation involves. If instead of rising from the fractional value to that of an integer, he is no longer a member of the State, he must cease to owe any other than a domiciliary allegiance, and the idea of a representation founded on his existence here, must be exploded forever. And from this dilemma there is no escape. If he is a citizen, the elective franchise is his right. If he is not, representation on that basis is logically inadmissible.

"The effect of the oligarchic process is to reinstate the governing class as it was before, without any check upon it. This we cannot afford to do. There is, fortunately for us, a loyal element among them, that has helped us to bring them back, and may be used to keep the peace—not by either arming or disarming it—but by the restoration of a mere right, which is essential to its protection as well as our own. It is a happy circumstance that the measure of security required by the people of the loyal States, is precisely that which the Constitution has imposed on us as a duty. The obligation is to guaranty to every State in this Union a republican form of government. If 'the whole commonwealth, comprehending all its orders, with the privileges belonging to each,' is not republican, we are bound to make it so, and are endowed by the Constitution with all the powers necessary for that purpose. But how are these powers to be exercised? Not by the President, because he cannot prescribe the terms. Not by a mere refusal on the part of Congress to admit, because that would be a refusal to perform—but by an act of legislation, which it will be only the duty of the President to enforce. It is a narrow view of this duty which gives to it a merely negative character, such as to put down a usurpation, or drive out a tyrannical majority. There is a positive obligation to *warrant* or make sure to all the people, a republican form of government; and here is the power that has been sought for so diligently under the law of war, to deal with the conquered territories in such a way as to secure to all their loyal people the rights to which they would be entitled under a republican form of government, and to protect the Union itself from all future disturbance. These States are without governments of any sort—those which existed and were disloyal having been overthrown. It is our constitutional duty to supply them with new ones of a republican character, and to provide that none other shall be erected. If their black population—if a majority of their loyal inhabitants—nay, if a mere minority demand the fulfillment of this guaranty, by insisting that we shall provide them with a government that shall admit them to the rights of citizenship, and be at least partly within their

own control, we cannot evade the performance by the plea of a want of constitutional power. The declaration of the duty gives it to us, with all the incidental means. That duty is not denied; but we have wielded the sword so long to enforce the law, that many people have come to the conclusion that there is no other weapon for such a case, when in point of fact it is clearly inadequate to this part of the work, and the power of the Legislature is the only one that can successfully accomplish it. It is undoubtedly in accordance with our practice, as it is with the spirit of our institutions, that it should be left to the people themselves, in the first place, to be performed by them in that condition of freedom which our arms have given them. But if they will not do this of their own accord—if the class that has been accustomed to rule, will insist on holding the rein and denying to their fellows, even to a respectable minority of them, the rightful privilege of citizens under a republic—I know no possible way of meeting the case, but by interposing ourselves and prescribing a fundamental law for the occasion. It will not be enough, as I have already remarked, to refuse the Congressmen who may apply on terms that are inadmissible to us. That would be only a denial of justice to the disfranchised which might prove indefinite, instead of the fulfillment of an admitted obligation. If there be any limitation of the right of suffrage it must come from the supreme authority, which is here. There is no power elsewhere, and certainly none in a society that is yet in a state of chaos, formless and void, and with nothing but darkness brooding over it. That authority, it is true, might well disfranchise individuals, such as the traitors themselves, for an enormous crime which showed that they could not be safely trusted with so important a function. It could not, however, proscribe a whole class, comprising a majority of the loyal people, all native to the soil and impeached of no crime, merely because they had black skins or woolly hair, without violating the essential principles of republicanism, and laying the foundations of an aristocratic government. No argument could defend it, except on the judicial hypothesis that the race so excluded had no rights at all that a white man was bound to respect; which would be fatal of course, as already shown, to the whole principle of representation as applied to it. But this hypothesis has no foundation in our early history of practice. The founders of this Government never dreamed of such a distinction. The great charter of our fathers had before affirmed the equality of all men. It was not race or color, but condition, that created the constitutional disability. The slave, of course, could not, in the nature of things, be

admitted to the privileges of a citizen, because that would have been inconsistent with his condition. Everybody else was counted, except the Indian who paid no taxes—an incarnation, by the way, of the revolutionary formula, stereotyped on the hearts of the colonists, that condensed the causes of their struggle into two memorable and mighty words. The notion that a taint of African blood, or any diversity of complexion, was a disqualifying feature, is a purely modern invention, which is but the growth of that barbarous and unnatural system that has debauched the moral sentiment, and left in many minds only the feeblest conceptions of rational freedom. The free negro voted originally almost everywhere. It was a consequence only of his unquestioned citizenship. To admit him, it did not require a special grant, by the insertion of the word 'black' in any republican constitution. To exclude him it did require the insertion of the word 'white.' The only color that the framers of the Constitution seem to have ostracised is the red. But even here, it excepted the tax-payer, and was by a designation of race. They had sense enough to know that a principle of exclusion resting on so uncertain a basis as color, would be unfitted for any constitution.

"Apart, however, from the considerations already stated, there are special reasons in the present case for insisting that the guaranty shall be fulfilled in good faith; and these are, to recompense the black man for his unwavering loyalty in the hour of trial, to afford him the means of self-protection in the enjoyment of the rights he has so richly earned, and if these are not enough, to protect ourselves against any future disturbance from the same arrogant and presumptuous class which has just been chastised into a decent respect for ourselves, and a reluctant submission to our laws.

"We began the war by repelling the black man and returning him to his master; by doing everything, in short, to alienate him from ourselves, and prove to him that he had nothing to expect from us; and this was called statesmanship! If ever a people deserved to be chastised, it was ourselves, for the ineffable baseness and fatuity which refused the aid of the negro, and sent a hundred thousand white men to die, rather than wound the pride, or harm the property of an enemy! We failed to drive him from our support even by the unkindest usage. When we plunged within the storm-cloud that overhung the South, and concealed everything from outside view, we were not long in discovering that the white skin was everywhere synonymous with the traitor heart, and that wherever we could meet a black man we were sure to find a friend. He took our soldier by the

hand, led him through the outposts, pointed out the secret path, traveled with him by night, shared his last crust with him, and baffled the bloodhounds that were on his track. As the war progressed, we began to find that with such an auxiliary against us, success was impossible. We made him free. But still we could not lift him into the position of a soldier, which was a privilege of caste in ancient times. People who foresaw that the step was an easy one from the soldier to the citizen—themselves of craven hearts and more slaves than he—insisted that he was like his detractors, loved his chains, and was a coward by instinct, and that the white soldier was a fool, who would throw down his arms if you sent him an auxiliary whose skin was not quite as fair as his own. You listened and believed. But by and by, impelled by necessity, you allowed your brave and right-thinking Secretary of War to arm him quietly. You rather winked at, than encouraged it; and before long the truth blazed upon you from the trenches of Port Hudson that the black man was in your ranks. He has now added to the title that God Almighty gave him, a claim upon your gratitude. How do you propose to pay it?

"Nothing is clearer than that you have made the privilege of the ballot necessary for his protection, by making him nominally free, and using him to put down the rebellion of his master. That master will not soon forget the infidelity of the slave on whom he relied, or the humiliation that the proud chivalry has suffered at the hands of its own born thralls. Even the bond of interest that compelled him to treat that slave with kindness, because he was his money, is now broken. Unable to wreak his baffled vengeance upon you, he longs to pay back the debt he owes you, by visiting his impotent malice upon the humble instrument of your triumph, and proving to the world the truth of what he has so often told it, that you have only made his condition worse by elevating him to freedom. He begs you to withdraw your black troops. He wishes to be relieved from your authority, by being allowed to resume his place in the Union which he hates. For this, he is willing to recognize the results of the war in the nominal emancipation of the slave, if you will leave him subject to his authority, without rights of citizenship, and without any security for the practical enjoyment of the liberty you have given him. He can afford to make this offer, and others, which the Executive hails as unexpected evidence of progress—because he cannot help it. The only surprise to me is, that on such an invitation the whole South did not rush incontinently into the executive embrace. But will you accept it? If you do, what is your gift of freedom to the black

man? It is but 'the Dead sea fruit, that tempts the eye but turns to ashes on the lips.' What will you have done for 'the ward of the Republic,' as he was characterized by our generous and noble-minded martyr President, if he is to pass into the condition of a Pariah, and to accept such terms as his humbled and exasperated master may impose on him? You will only have mocked him with the mirage of liberty to make his condition tenfold worse than it was before. Is this the fulfillment of your plighted faith? Was it your purpose only 'to keep the word of promise to the ear, and break it to the hope?' It was the very refinement of cruelty to have inspired such hopes, only to disappoint them. Better, far better, have left the miserable victim of your guile to the slavery in which you found him, content, perhaps, with his condition, and dreaming of no change, than thus to lift him from the earth, only to dash him down again under the feet of his oppressor. Better for yourselves, too—for your present credit and your future fame—if you had declined his services altogether. The world, in that case, would only have regarded us as fools. It will now justly point its finger of scorn at the Government which was capable of the meanness of turning its back on the benefactor to whom it appealed, and appealed successfully, in the hour of its sore distress. What is this but trusting the lamb to the vulture? Will the governing class, to whose tender mercies you are expected to turn him over, because they understand his nature and his interests better than you do, ever suffer him to rise from his degraded condition? What is your experience already on this point? What earnest, what foretaste, what assurances do these men give you of future reformation, even now that the motives for good behavior are so exigent and overwhelming? The condition of the black man as a slave disqualified him as a witness against the master race, who were thus practically in the exercise of a power that placed his person and his life at the mercy of his paler brother. He is now free. Without this privilege, he has no rights that a white man can be compelled to respect. It is essential to his security. No court within the wide area of civilization would exclude him, or any other man, from the witness stand on the ground of race or color. If admitted, and untruthful, as they insist he is, his credibility is still a question for a jury of white men. And yet with this advantage, this badge of servitude is still insisted on, and instead of closing the courts of justice—if they deserve that name, where evidence is excluded on system, and the tribunal of a Turkish *cadi* would be ashamed—the Federal Government submits to the humiliating necessity of withdrawing all controversies, wherever the rights

of a negro are involved—ignoring those wherein his testimony might be required between white men—within a special jurisdiction of its own, while it allows these people to make constitutions, just to enable them to escape its power, and do their own will in such particulars as these, as though they were really free of our rule, and could be safely trusted with the performance of such a work! But how is it in regard to the marital relation, with all its incidents? How as to education and preparation for the ballot? Have the schools been thrown open to him? Is he free to work on his own terms, to acquire property, to go about wherever his interests or inclination may lead him, and to seek employment at such wages as he can fairly earn—or is he still subject to condemnation as a vagrant, and sale or apprenticeship for fines and jail fees? What says the official report of General Schurz, the result of a long and extended tour, which is so mysteriously ignored, while in the face of its authentic and overwhelming testimony, the President is relinquishing our blood-bought conquests to the enemy, without even taking the advice of Congress, though now sitting at the capital, and proving the tranquillity of the South by the result of a five days' sojourn in three of its principal towns, which developed the fact that black troops could not be employed to advantage because it would be necessary to accumulate them in large bodies for their own protection? How is it in Mississippi, where the local militia are already stripping the negro of the arms purchased from you as cherished heir-looms—dear memorials—consecrated by the war of liberty, and stained, perhaps, with their own blood, spilt in your own defense, or with the blood of the discomfited barbarians who are now so valorously disarming them? How is it in Tennessee? How in Virginia? It is not the overthrow of the rebellion, but of the abolitionists of the North, that constitutes the inspiring and exultant theme of the Speaker of its House of Delegates. He thanks God that Virginia can still trample on the rights of the black man, because, as he thinks—and as the Executive thinks of all these States—she has never been out of the Union. How, then, is the condition of the negro improved by emancipation, under a policy that cuts him off from the enjoyment of all protection in person or property, and is intended obviously to keep him in the bonds of servitude, and to prove to the world that the real victory is theirs, and that your boon of freedom was only a cheat and a delusion? What is there to prevent the re-enactment of the whole black code in any of these States as soon as they shall have been relieved from our control by readmission into the Union upon the terms of the Executive? If you object

—ay, even to the imprisonment of a northern seaman—you will be told as formerly, that these are matters of State regulation only. Will you appeal to the courts or send ambassadors to Charleston to negotiate an amicable submission? They will set your courts at defiance, and drive you out with scorn and contumely, as they did before, and the Democracy of the North will clap their hands and exult over your discomfiture. Is the peace of the country to be secured in this way? You have carried the cup of freedom to the lips of the black man and he has drunk of it. If you would make of him a peaceful citizen, and an obedient member of the State, you must protect him in the enjoyment of the liberty you have given him. To do this, it is only necessary to invest him with the defensive armor of the ballot. That will secure to him the consideration of the white man. That will make it the interest of the superior classes to cultivate him. That will educate him into an intelligent acquaintance with his duties. That will secure peace and harmony to the land. The black man has shown himself to be as docile, gentle, and humane, as he has approved himself loyal and brave. He will make a valuable citizen if fairly dealt with. But remember! he is a man, who has tasted liberty, and felt the glow of an unaccustomed manhood, as his pulse danced with a new inspiration, when he looked up at the folds of your starry banner on the perilous edge of the battle. Beware how you allow these men, who have never yet learned, and never will learn anything, to trample on him now. The policy foreshadowed in the proclamations will make only a discontented people. It is the slogan of battle—the herald's denouncement of that war of races, which is so strangely apprehended by those who urge the very opposite policy to heal up a war of sections. It is the preparation for these deluded people of a future, before which even the savage horrors of their own revolt may pale. The kindred policy that ruled our councils in the same interest for two long years—as it seems to rule them now—proved fatal to the system it was intended to serve, by making its preservation impossible. It may be that God Almighty intends to finish His great work, by giving a further rein to the infernal spirit that precipitated these madmen into the revolt that melted the chains of their slaves. Let us see to it that we be not called upon to repress the outbreak of nature, by drawing our own swords hereafter upon our faithful allies in the war of freedom. We can prevent this now—and will if we are wise—by a mere act of justice that is simple and reasonable, and will trench on no man's rights, while it will extend the area of freedom by popularizing these governments, and bringing them at once to the

republican standard of the Constitution. That act is demanded by considerations of the highest wisdom, as well as of the strictest justice. It were a foul shame to refuse it, and a fouler still to add to that refusal the future possible infamy, of turning our own arms, at the call of these delinquents, upon the trusty auxiliaries who have assisted in subduing them, when the tyranny of their oppressors, and the instinctive yearnings of humanity, may drive them to resistance. I should blush for my country—and weep for it too—if it was capable of an atrocity so unutterably base.

“But though we were even insensible to the claims of justice and the emotions of gratitude, and entirely indifferent to the elevation of the negro race for its own sake, we want their vote for our own protection. Our best security is to erect a breakwater against the encroachments of the disaffected white man, by enlisting the counteracting influence—the cheap support in peace—of the loyal black man, to whom we have so successfully appealed in war. We need his suffrage now to assist us in keeping that peace which he had so large a share in making. Take away his musket, if you please, but do not disarm him entirely. The question with me is not whether you can trust him, but whether you can trust the man who asks you to give him the rule again over his rescued bondsman. There are two classes of white men in the seceding States. The higher and more intelligent is essentially anti-republican in habit and sentiment, while the inferior and ignorant is even more abject and servile than the slave himself. He may be educated, however, into a just self-respect, and a sense of his own interests. The governing class never can. To make them republican, you must change their whole social system and their natures along with it. Until you do, and they are thoroughly regenerated, they will be unsafe depositories of power in a Government like this. If you will not disfranchise the man who has already shown that he is unworthy of trust, you must at least render him powerless for mischief, by placing a sentinel over him, with the bloodless but potent weapon of the ballot, to keep him in order. I do not insist that you shall disfranchise the rebel who professes to have repented, because without him you will have no white element in the case. I have no objection that you should pardon his crime, and even restore to him his lands, if you think that the interests of justice require no indemnity, and no examples. My object is not vengeance. I do not thirst for his blood, even with all his barbarities. Give him back everything else. But for the power which he has shown himself unworthy to hold, and which he has so justly

forfeited, restore not that, I adjure and beseech you, by the recollection of the bloody trial through which you have passed; by the respect you owe to the bereaved, the widowed, the orphaned, the maimed who yet live; and above all, by the memory of your martyred, butchered, starved, and mutilated dead. Insult them not by the declaration that the earth has drunk their blood in vain. Expose not yourselves to the bitter reproach, that before their bones have been gathered by pious hands from the fields where they have been left to bleach unburied, their very murderers have been hurried back into your embrace like returning conquerors. If this reunion is to be solemnized on terms like these, wait at least until you have put off your mourning, and stripped your public places of the habiliments of woe. Bury your murdered President out of sight. Cover up the graves of Andersonville, with all their horrid secrets, and then—then celebrate these unholy nuptials—if you can. Let it not be said, at all events, to your discredit, that ‘the funeral-baked meats have coldly furnished forth the marriage table.’ Open no hall of Valhalla, where the returning braves of the South shall quaff their foaming ale, and pledge you from the grinning skulls of your own dead and forgotten heroes.

“But there is another consideration that gives us the right, and makes it an imperative necessity, for our own protection, to insist that the negro shall be allowed to share the rights of citizenship in their highest sense, and that is the fact that the conversion of the chattel into a freeman will greatly enlarge the representation of those States, and bring into Congress some thirty votes on the basis of this peculiar population, while the loyal States must suffer from the increase. If they come, it must be in a representative capacity of course. But whose representatives will they be, if the whole class in whose names they come, and for whom they profess to speak, is to have no voice in their election? To call them representatives of any other than the ruling class, would be a gross abuse of language. The benefit of your act of emancipation then is to inure to the master who has endeavored to break up your Government, while the black man still holds substantially the relation of a slave, and is only used to count for the benefit of his oppressors! And whom will they send to manage the affairs of the Union in the name of the slave? Will it be the man whom he would select himself? Will it be an advocate of his interests? Will it be those who will provide for the payment of the debt of the war, or the pension pledged to the families of the brave soldiers whose very bones will be spurned aside with contumely by the rebel plowman? What is our experience thus far? Among the first

men sent here from Louisiana, was a signer of the secession ordinance, and all three gravitated at once, as by a natural law, into the ranks of the party that opposed the war. The first offering from Arkansas to the other end of the Capitol was a graduate of the same school. But will the holders of our public debt—will our brave volunteers agree to this? No! Ask the men here, however, who sympathized with the rebellion throughout, and denounced the war, and the debt made by it, as alike unlawful, and though professing to be Democrats, they will answer with one voice that this representation by proxy is right and proper, although they do not even admit the negro to be a citizen, and hardly confess him to be a man. While he continued a slave, there was nothing unreasonable in the agreement that the master should speak for him, if he was to be heard at all, because he could have no will of his own. It was at all events the bargain, and we stood by it. That slave is now, however, a freeman. He has a will of his own, and the man who owned him no longer represents it, but the contrary. Looking to his present relations to the late slave, his assumption of the right to speak for him, is a double outrage on the black man. It is not only to deny him a representative, but to give that office to his enemy. It is in effect to re-enslave him.

"If the white man of the South is of the opinion that the negro is not fit to vote at home, he decides at the same time that he is not worthy to be represented here; and in claiming that right, asks for himself a power in the Government that will make one unrepentant traitor the equal, in many instances, of two or three loyal northern men. He admits the injustice, too, while he preserves his consistency, by rejecting the negro himself in the interior apportionment of some of his own States. But is it just to the loyal States that he should exercise this power in the Federal Government? Will they consent to this inequality, now that the remedy is in their own hands? Are these people to be rated, in their condition of subjugation, at their own estimate before putting their armor on, as having vindicated their claim to be considered the master race, and so outweigh twice or thrice their number of northern mudsills? Speaking for myself, I do not choose to have my delegated powers, as the Representative of one hundred and thirty thousand northern freemen, neutralized by a representative of this sort, whether he come here by the *congé d'élire* of a military commander, or is puffed in this direction by the arrogant breath of a feeble but aristocratic constituency. If the white men of the South will insist that the negro shall have no political rights in the States, while he is to appear here to claim a recognition at our hands, only to add to

the power of the oligarchy in this Government, then I would insist that he shall appear here either in person, or by his attorney, or curator, or next friend, and not by a guardian or trustee under the appointment of his quondam master, which would be the sublimest of farces. If they are not content with this, then I would say to them, wait until by a constitutional amendment we can offer you the fairer basis of suffrage, which will enable you to swell your numbers as soon as you shall be prepared to do justice to the black man.

"It is insisted, however, and most especially by those who profit most by the laws of naturalization, and the principle of universal suffrage, of which they have therefore been the unvarying champions, that the negro is ignorant, and must be educated before he can be allowed to enjoy the privileges necessary for his own protection as a citizen—which is to say, in effect, that ignorance disqualifies for freedom, and ought to make a man a slave. It may be a question whether it were not well if that had been made a condition with all men. But why demand that of the indigenous black man who has been reared under our institutions, and has perhaps shouldered his musket in their defense, which is not asked of the foreigner whose vote and sympathies have been against us? Is he inferior in these respects to the Celtic Irishman who holds the destinies of your great metropolis in his hands? His instincts at all events—supposing them to be his highest faculty—have taught him to take the side of liberty, when the savage who burned him was exerting himself in the interests of the governing classes of Europe, from whose oppressions he had sought an asylum here, to overthrow the very Government which had so generously opened its arms to receive him, and lifted him from the dust into the privileges of a citizen. I would take that instinct, and use it as a counterpoise against the crude, uninstructed element that comes to us from abroad. I do not fear that it will fall under the influence of the aristocratic class any more than it did during the war. The negro will be sure to look with jealousy and suspicion upon the taskmaster from whose arms he has been torn, and who will still continue to regard him as his rightful property. That aristocracy, moreover, landless as it is soon destined to be, under another and a better social system, is sure to be swallowed up ere long by the upheaval of the lower stratum, when labor, now become respectable, shall assert its rightful supremacy, and the strong sinews of toil shall reclaim their lost inheritance by seizing upon the soil.

"But who are they that make this objection? Only the master himself and his northern friends. If they think so,

however, why do they object? What harm can come to the lords from the maintenance of the patriarchal relation, by turning it into a bond of kinship and good offices that will rival the constitution of the Highland clan? But they do not think so. They affirmed with equal confidence that the negro would cleave to his master, and fight for him, if he would fight at all; but it turned out to be a mistake, as every man of common sense knew very well it would. If the power of the master had been equal to that of the northern demagogue, he might possibly have taken sides against the Government with the same unanimity as the imported Caucasian who was led as an ox to the shambles, and made, like a blind Samson, to lay his hands upon the pillars of our Constitution, in that dark hour when all the powers of earth and hell seemed leagued together for its destruction. The negro has already solved that question in a way that shames even the poor white man of the South, who is indeed obnoxious to the imputation, and from whose example it might have been plausibly inferred, but for the experience of this war, that he would have yielded to the same influences. But what authority is there for the assertion that the black man is more ignorant than the poor whites of the South who delight in shooting, or the imported patriots of the North who gratify their equally savage tastes by burning him? Look at the revelations of the census and see what they declare. I venture to say that, considering the difference of condition and opportunity, the black man is no way the inferior. It is sufficient, however, that he has proved intelligent enough to be loyal, when his highly educated master was not saved from treason by his superior instruction. But who shall say that this loyalty was the fruit of ignorance? Not those, certainly, who prize the republican State, and think that knowledge is essential to its preservation. Its chief advantage is, perhaps, its felicitous adaptation to the general standard of humanity, in its extreme simplicity of form, and the fact that it requires so little of the learning of the schools to govern it. It would have perished in the recent trial, if it had been left to the wisdom of its statesmen. It was the uneducated common sense—the reasoning instinct only—of its own people, that saved it. God defend us from the statesmen and diplomatist whom this revolution has evolved!

“But if the negro is ignorant, whose fault is it, and what is the remedy? Has he not been studiously denied the privilege which his white and jealous Democratic rival has so largely neglected, of learning even to read? And is the slave-owner, who is responsible for this, to meet us with the confession that he has purposely kept this man in darkness, because he feared

that a spark might fall upon his intellect that would kindle into flame and melt his chains, and then convert his own inexpressible wrong into an argument against his freedom, and ask us to wait upon the education of the man who has just shown that he is better fitted for its enjoyment than himself? Thank Heaven! it does not require an education in the schools to make a man love liberty. The whole infernal system of black laws is founded on the dread of human instinct, and the fear that the natural struggles of humanity, if aided even by such feeble lights as might be accessible to him in his condition of servitude, would result in making him a freeman. They are themselves a pregnant confession that the slave is gifted with powers and susceptibilities that might be awakened into mischievous activity, and cultivated for the highest duties of citizenship in a free State. Whether the ignorance of the inferior class, either imported from abroad or thus diligently cultivated at home, ought to constitute a disqualification, it is perhaps too late to inquire, since the policy of the country, shaped and fashioned by the Democratic party, has settled it as a principle, that the right of self-government cannot be justly made to depend upon the education or intelligence of the voter. It may be right, for the twofold reason that the love of liberty is heaven-born, and the right to vote the best educator of the freeman. If gentlemen on the other side have come now to think differently, I have no objection to go back and trust the suffrage only to those who can read and write, and have been long enough among us to understand our institutions—to shake themselves loose from all foreign domination—to unlearn the Old World ideas in which they have been reared—and to appreciate the freedom which we enjoy. I cannot consent, however, that one rule shall be applied to the imported Celt, and another to the home-bred African. The right to freedom is not a question of either race or color, but the common inheritance of humanity. There are no aristocracies in God's providence but that of understanding, which is not transmissible by descent, and is the appanage of no particular race or class of men. I do not mean to say—for I am no fanatic—that the negro race is, upon the whole, the equal of the white one in this particular, any more than I would affirm that any one white race is equal to any other, or that all the white races are equally fitted for the task of self-government. That is a proposition which no man can confidently affirm, in view of the past history and present condition of the world, but yet it involves no question as to the natural aspirations—which are only inspirations—of man for freedom, or his right to its enjoyment. If I am to choose, however, between these two elements,

I would take the black man, upon the evidence of the last few years, and reject the equally ignorant white, who is so debauched as even to love slavery—who allows his very instincts to be smothered—and who submits his conscience and his understanding to a direction whose dominion rests upon the same profound and sagacious policy that has locked up the treasures of knowledge from the black man. Everybody must have been struck with the marvelous unanimity with which both these elements arranged themselves, though on opposite sides, in the late contest. When men begin to reason for themselves they are almost sure to differ. 'Instinct,' says Mr. Burke, 'when under the guidance of reason is always right.' If it was instinct, however, that led the black man in the one direction, it was something other than reason that herded his jealous rivals into one solid mass in the other.

"But it has been objected in some quarters, that if the negro is endowed with the power of the ballot, he will, under the guidance of the same instinct, combine with his fellows to seize the governments of the rebel States into his own hands. This argument is the very opposite of the one which I have just examined, and while the other has only been invented as an apology for refusing the ballot by those who had no fears of the master's influence, has not perhaps been without its weight upon both the northern and the southern mind. Nobody can doubt that in this latitude at least, there is a morbid apprehension of what is called negro equality, but really means negro superiority; and it is perhaps not unnatural, that now that the negro has shown that he will fight, the men who flinched from that ordeal in the hour of our danger, or even those who have been driven like cattle into the armies of the oligarchy, should dread the comparison, and feel that there was nothing now but the denial of the ballot to prevent the black man from asserting his natural superiority over themselves. This apprehension supposes, however, a power of combination and forecast, without even the stimulus of oppression on his part, which is anything but consistent with the idea so studiously inculcated of his incorrigible inferiority, and surrenders all that has been affirmed by philosophers and divines in regard to his normal condition, while it admits that even the higher culture of the white man would give him no advantage in the contest. But in the few cases where the blacks are in a majority the difference in numbers is small. If it cannot be overcome by the superior training of the white man, then the ability of the negro and his consequent title to command, are established by the highest possible test. But in a quarrel of races what is to become of the mulatto? If the least

perceptible infusion of negro blood, the very faintest suspicion of a twist in the hair, is sufficient to authorize us to deprive our unfortunate hybrid cousin of all participation in the Government, what assurance is there that the Caucasian flush will not prove equally fatal on the other side? History teaches us that this distinction is as likely to prevail as the other. But surely the chivalry, which has held in subordination by its superior address the turbulent but submissive Democracy of the North, would not shrink from the encounter in the same field with the despised and degraded African. But the idea of such a combination, as the result only of the most generous treatment, is the most extraordinary of paradoxes, if it does not deserve to be characterized as the wildest of chimeras. The people of the South will divide, as before, upon the policy of the Government, and struggle, as before, for the possession of its offices. Both sides, of course, will seek to propitiate the black man, because he has become a power in the State, and that one which will secure his confidence, and go farthest in its professions of regard for his interests, will be sure to secure the majority of his votes. If he be a child—as he perhaps in some sense truly is—he will be won by kindness, and ask nothing more than freedom of locomotion, protection to his person, and the means of enjoying, without molestation, the rewards of his own labor. Make it the interest of his late master to cultivate him. Give him a vote, and the 'poor white trash' who despised him because he was a slave, will respect him because he is a sovereign. If it is necessary to educate him, because he is ignorant, give him an interest in the Government. It is the only school for the adult, and perhaps the best for all ages. The ripest thinkers of the times are agreed that it is a nursery of instruction that develops the man with wonderful rapidity, and it is this compensatory power that has perhaps served more than anything else to neutralize the evils of the prevailing system. To insist on a preliminary education is to begin at the wrong end. Leave him for instruction in the hands of his old master, and you offer a premium for the continuance of the old system, which kept him in ignorance of his rights and of his power. Knowledge will make him more formidable than ever. So long as he is kept under the State, and feels that he is no part of it, he is sure never to rise by this process. The men who control the Government will have the same interest in keeping him down as heretofore, re-enforced as it will be by phantoms of terror that will haunt their pillows, along with the new feeling of resentment and jealousy, which his compulsory enfranchisement has engendered. Cherish not the delusion that any good behavior on his

part will ever secure for him an admission to the rights of citizenship. It is now or never. There is no case. I think, in history, where a privileged class has ever surrendered its prerogatives to those that were beneath it. Indulge not the hope that you will ever make of him a contented subject. It is as impossible with a people so numerous, to maintain an intermediate grade between the slave and citizen, as it is to establish an intermediate variety in nature, or an intermediate condition here between the State and Territory. The black man knows that he is free. If he asserts his right to meet his fellows in council for purposes which touch the interests of his race, either in this world or the next, the rumors of insurrection will load the atmosphere. The white man will restrain his liberty by biting statutes and relentless cruelty. The black man will rebel, and the result will be a chronic war, which will repel the emigrant, and end in the extermination of the weaker race. The groundless panic that pervaded the South so recently foreshadows the evil that is to come. Has the kindred policy of the British Government toward the Celtic Irishman succeeded in conciliating his affection for the English race or nation? If those who favor it here had taken the trouble to look into the cause of that exodus that is unpeopling his ancient home, and flooding our shores with its living tides, they would have discovered that there was something more than a war of races to explain the undying hatred with which the Irish exile looks upon the Saxon Englishman, and they would have found its solution in the very policy which it is now proposed to inaugurate in order to prevent a war of races in the South. It is unnecessary, however, to go so far. The recent bloody disturbances in the island of Jamaica are but a type of the social horrors which a mistaken deference to its prejudices is preparing for that deluded people.

“But it is objected by the President that this is a question for the States under the Constitution, and that the concession of the elective franchise by himself to the freedmen of the South, must have been extended to all colored men wherever found, and so must have established a change of suffrage in the North as well as in the South, and would have been an assumption of power which nothing in the Constitution or laws of the United States would have warranted.

“This argument assumes, in the first place, that the defaulting States are already in the Union, free from the penalties of crime, and with all their rights and privileges as intact as those of their loyal sisters. If this be true, it is not to be questioned that the right of fixing the qualifications of their own voters has been left, *sub modo*, with themselves. But how then, it

will be naturally asked, did the President himself acquire the power of defining the qualifications of the voters in the first instance? If he could do this—if he could either abridge or enlarge the privilege—and he could as well do one as the other—so, *à multo fortiori*, could the law-making power of this Government, in which the sovereignty resides. If he could do either, he might as well have conferred the privilege on the black man as on anybody else. But then he objects that this must have extended it to all the loyal States, as well as those that have rebelled, which is an assertion that his jurisdiction has attached, by virtue of the rebellion of the delinquents, to the States that are without sin. I am constrained to say that this is an argument which I have not been able to comprehend. Taking it, however, to be true, as claimed, it must have equally followed from his summary disfranchisement of the voters, whether loyal or disloyal, who might decline to take the oath to support all proclamations and laws having reference to the emancipation of the slave, that we of the loyal States were all disfranchised, too, unless we submitted to the same conditions.

"Taking it, however, only in the milder sense of a suggestion, not uncommon in the South, that the loyal States which now deny the suffrage to the black man, would be either expected—to save their own consistency—or might be compelled by Congress to conform to the same rule, there is a word more to be said in the way of answer.

"Whether these States could be regarded as strictly republican, with such a limitation of the elective franchise, if the necessities of the country or the protection of a numerous class of citizens required the presentation of the question to the consideration of Congress, is more than doubtful. The paucity of the blacks, however, in the northern States, where there is no disposition to oppress them, and their uniform enjoyment, without molestation, of every social and civil right, without the protection of the political privilege of the ballot, has made it a question of no practical importance to the country, and led to no formal complaint, although the overshadowing influence of the slave power has robbed them, in many of the States, of that privilege which the overthrow of slavery will sooner or later restore to them. Whether their inherent right as citizens to vote could be enforced by an appeal to the judicial tribunals of the country, upon the footing of the constitutional guaranty, is a question which I am not prepared to answer, and do not care to discuss. There is no issue now as to the loyal States, to demand the consideration of Congress. There is none pending

as to their admission here. It is only the criminals that are at your bar—not asking pardon, but demanding to be restored to power. They went out to found a slave empire. They still think that God and nature intended the negro only for that condition. He counts by millions in the rebel States. He is a freeman now. His master is his enemy. He obviously intends to re-enslave him if he can. He wants power to enable him to do it. The negro wants protection, and has earned the right to it, if it was not his before. We want peace and security, if not indemnity for the past, and we are sure that they can be only secured by making these governments republican. They have placed themselves by their own act in a condition in which, by the confession of the President himself, it becomes our duty to execute the guaranties of the Constitution. When we shall have done this work, it will be time enough to enter upon another that will be purely voluntary; and if the reconstructed States shall insist, when they are in a condition to do so, that we shall deal with the negro ourselves, as we have compelled them to deal with him, I doubt not that the justice of the North, with its vision purged by the rising beams of universal liberty, will anticipate any action here, by undoing what nothing but a base servility to the perished feudalism of the South could ever have accomplished.

“But why hurry the return of these States? Why undertake the hopeless and preposterous task of resorting not only to temptation, but compulsion, for the purpose of bringing about a reunion which can only subsist where it is spontaneous, and can rest securely on no other foundation than mutual respect and good will? It is a great problem, and a difficult one. Is there any immediate overshadowing necessity for their reappearance here? Is there any adequate inducement to indemnify us for the admitted risks we must incur from immature and ill-considered action? What would be thought of the sanity of the man in private life, who would insist on hurrying back to his embrace and confidence the unfaithful partner who had violated a sworn engagement of fidelity, purloined his goods, fired his dwelling, and murdered a part of its defenders; who instead of yielding had only been surrendered by his slaves, or overtaken and disarmed by the officers of justice, and had never even admitted his crime, or given one token of repentance? Is there not danger enough already in the rapid process of disbandment and surrender, that has been going on under our own eyes, to the terror of our only loyal friends, both white and black, in the South, without reference to the wishes or opinions of the people or their Representatives here, and in defiance of official infor-

mation collected by the Government itself that the spirit which inaugurated and directed this hellish revolt was as rife as ever in the land, that we should insist on strewing palm-branches in their way, and inviting them to the honors of a triumph at the Capitol? The President admits that his policy 'is attended with some risk,' but excuses it by the suggestion that 'it is a risk that must be taken.' This, I humbly think, is a *non sequitur*. It was not necessary that he should have a policy, and a perilous one, or that we should take the risks that are admitted to be incidental to it. However it may be with the soldier, it is not out of 'the nettle danger' that the statesman would 'pluck the flower safety.' He will take no risks if he can help it, and with only a rational treatment of this question, I think they are unnecessary here. The people of the loyal States, who fought this battle, are now in the possession of the Government. They may—and if they are wise they will—take their own time to determine how they will readjust its machinery, and heal over the wounds that the war has made. It is in their power now to exact every possible security for the future.

"Why, then, this inexplicable eagerness to surrender all the advantage of our victory without any security at all? Why insist that the overthrow of these rebels in the bloody arbitrament to which they have appealed, is to be only the signal for their restoration to their former estate? Is it necessary that we should constrain the reluctant condescension of these haughty masters, who so lately spurned us as slaves, to the renewal of the domination which they had come to loathe from a very feeling of satiety? Has the attempt improved or mollified them? General Schurz is the witness, that the policy of not only pardoning, but inviting the traitors themselves to reconstruct their States, has had the worst possible effect upon them. And it was but natural that it should. If they do not despise us for our weakness and our voluntary self-abasement, they will be at least prepared to conclude that they are more necessary to us than we are to them. They were not long out themselves, before they began to yearn for the scion of some royal house beyond the seas. Shall we furnish them reason to think that we are pining for the return of our natural lords, along with our Democratic brethren, who have been wandering like sheep without a shepherd, and lamenting the desolation of the Capitol with more than the tenderness of the Moor, who wept the exile of the last of the Abencerrages under the deserted towers of the Alhambra? What reason, beyond their mere repugnance to the association with the northern mudsills, will they have to lament their failure in the battle-field, when they are once more

reinstated in their original dominion here? Are these the means by which a statesman expects to improve the lessons of the war? If kindness and submission could have won their hearts, they never would have left us. Is anybody weak enough now to think that they are so chastened and humbled by defeat, that a restoration to power, instead of intoxicating, would only disarm them? That would not be in accordance with human nature or historical example. Did the catastrophe of Charles I result in any improvement of the family? Their restoration was but the prelude to another revolution that drove them from the throne. It is the same blind confidence in the reformation of these men that is now menacing this Government with ruin.

"But is there any evidence that they are changed, or that they are yet in a proper frame of mind to come back, and perform faithfully their duties here? We all know better. The special commissioner of the Executive says not, and his testimony is supported by all the presumptions in the case. It would be unreasonable to look for anything else. They are but men, like ourselves. Alienated in affection by a systematic education of thirty years, they went out with the determination never to return. The Southern heart went with them. Inflated with pride and vainglory, they threw down the gage of battle, and defied us in the presence of a world that sympathized with them. We took it up, and they are at our feet, deeply wounded in their most sensitive point, smarting under the humiliation of a defeat at the hands of their own slaves, and realizing more than the bitterness of death in the depth of their fall, and the painful recollections that it suggests. How unreasonable to expect that hatred, the deepest and most undying—doubly intensified by such humiliations—could be converted into love by such a process, and the lessons of a generation unlearned in the twinkling of an eye! But they do not even affect it; and I am rather inclined to respect the pride that, under the greatest of temptations, has prevented them from condescending to the meanness of the hypocrite. They confess that they are subdued, but only, as they tell us, by the power of numbers—the mere brute superiority of the North. They do not profess contrition for their great crime. They do not even admit that they have sinned. Nay, they glory in the act, treat fidelity to their infamous confederacy as the most heroic of virtues, award public honors under the very Government that has crushed them—and which that Government ratifies, in recompense for treason against it, and visit the social ban, if not the bullet or the knife, upon such of their people as have fought valiantly in its defense.

It is but reasonable, I say, that, coming as they do, out of the fires of the rebellion, they should feel thus. But that they should act thus under our own eye, is evidence either that they do not wish to return, or that the dejection that followed their defeat, has given place to the assurance, that they are not only to be pardoned their offense, but to return as conquerors. Their leaders certainly do desire to get back again, because they are overthrown in battle, and it is but to exchange the place of a subject for that of a ruler, or at least an equal. To accomplish this, they would have been glad to ransom their lives and property for the cheap consideration of negro suffrage. They expected probably no terms more favorable. The lenity of the Government has assured them that treason is no crime, and that there is to be no atonement for the past. The tone of the proclamations and the tenor of the diplomatic negotiations have taught them that nothing was expected or desired by the President but the recognition of the freedom of the slave, and the repudiation of the debt incurred in carrying on the war, and that there was to be no other security for the future. The outgivings of public functionaries have instructed them that they were wrong in claiming the rights of belligerents, and that they have a right to resume their places here upon such conditions as they can make with the Executive. They care nothing about you or your laws. They look only to the Chief Magistrate, while they defy the opinions of your constituents, and regard you only as the mere executors of his will. There is a Providence in these manifestations that warns us of our danger, if we would give heed to it. Ignoring them, we shall not have even the poor apology of saying that we were deceived in a case where even the largest professions—if they had vouchsafed to make them, as they have not—ought not to have been allowed to put us off our guard. I know that confidence is a generous plant, and that there are natures so unsophisticated as to be above suspicion or distrust. There are men certainly whose boundless charity would not only forgive offenses, however frequently repeated, but even persuade them to give their faith anew to those who have dealt treacherously with them—as these men have with us—while they would reject the counsels of the wise and prudent, on the ground that their suspicions were ungenerous, and the results apprehended by them improbable. These men may be good Christians, but they are poor statesmen, and they misconstrue the spirit of the Christian maxim which teaches forgiveness, if they suppose that it inculcates trust. The thing that has once happened may happen again. It is not sufficient that it is improbable. It is the business of the statesman to see

that it is made impossible. No blind confidence—no false sense of security on his own part—will excuse him for hazarding the peace and welfare of a nation, by giving his trust a second time where it has once been disastrously betrayed. He has no right to sport in this way with the life of a people. He cannot afford to be thus generous with other people's goods. It is not enough to tell us that the present Executive of this nation—with a strong feeling, of course, for the desolation of the South—is magnanimous enough to forgive and generous enough to confide in the honor and loyalty of his old neighbors and associates in council, although they have so cruelly persecuted him—as they will do again as soon as the opportunity occurs. The twenty millions of the loyal States who have seen so little good come out of that Nazareth, must have something surer to rest upon than his oblivious charity. I think otherwise, and so do my constituents. I have great respect for his opinions, but the facts and the presumptions are all against him, and I must be governed by them. If we are wrong, the error may be corrected hereafter. If he is wrong, it is irremediable. True wisdom demands that we should 'make assurance doubly sure, and take a bond of fate,' while there is yet time to do it, by providing against all possible contingencies, where the interests involved are so vast and inappreciable. If the terms seem harsh, that is the fault of those who are precipitating the solution. A reasonable probation would enable us to make them easier. I would rather, for my own part, trust to the mellowing influences of time. If you desire a reunion that will be permanent and real, you must wait till their hearts are changed—wait until the bitterness of defeat is past, and until they are prepared to confess their errors, and ask forgiveness, and restoration, in the spirit of the returning prodigal. Without repentance forgiveness is idle, and restoration worse. Philosophy and religion alike approve the soundness of this doctrine. You cannot accomplish a task of this sort by any forcing process. No wise Government would think of it. No sound or judicious statesman would advise it. If they cannot come back now in the right spirit, and will not come with such securities as we have a right to demand, it were better they should not come at all. I would hold them as they are—and with black troops too—until their territories are peopled by men who will recognize the value of the Union—ay, hold them forever, if necessary, as subject provinces. But it will not be necessary. They will be glad to return in a very few years, on just such conditions as you may impose, and will be grateful for the privilege. Admit them now, and withdraw your armies, and you leave your few

white friends, and your multitudinous black ones, to an ostracism as merciless as the bloody proscription upon which they can no longer venture with safety. They tell you so themselves. While the President informs you that these States, or some of them, are ready to return—in the face of the admitted fact that their people, in almost every instance, have refused to ratify even the advantageous bargain made with him by their leaders, by sending loyal men to represent them here—every breeze from the South is laden with the earnest remonstrances of the loyal people of those States, telling you that the withdrawal of your power will be the signal for their flight and exile from their homes, and altars, from the graves of their kindred, and their household gods, and beseeching you, in piteous accents of despair and agony, not to abandon them to their remorseless enemies.

"But before they do come in—whether by the door or window—there are duties to be performed to others, dangers against which we must provide, arising out of the obligations of the war that these men have forced upon us. We have incurred an enormous debt that is mainly owing to our own people. We must provide for the payment of its interest, as well as the redemption of all the pledges we have made to the disabled soldier, and to the widows and orphans of those who have perished in the field. Is it expected that these men will assist us in redeeming these obligations, that some persons are so anxious to associate them with us in the performance of this work of justice and mercy? Do you propose to summon these great criminals here, and translate them from the dock to the bench, as joint assessors with yourselves, and those who have poured out their money or their blood in ocean streams in bringing them to justice, in the resettlement of the nation, in perfecting its securities, and in fulfilling the obligations you have incurred to the public creditor, and to the families of those brave men who have gone down to death upon so many southern battle-fields? Will you insist that they shall come into council with you on such a question as this? The ordeal would be too severe. They have denounced the war as not only unrighteous, but unlawful; and they are not alone in this particular. It is not the rebels militant only—the men who so cheerfully staked their lives on their opinions—who think so. Their old associates in the North, who want them back on the terms of the President, have taught their followers here upon the same argument, that the public securities were worthless, and would be repudiated. Is there no risk of a new coalition on this basis? I venture to predict that the next phase of the reunited Democracy of the North and South, (for it will be a reunion of the party and not

of the States,) will be opposition to the payment of this debt. It may not discover itself at once in the shape of absolute repudiation in the North, but this new alliance will find other means, not less effective, to accomplish its work. The South, with all its prejudices and pride, would rather consent even to negro suffrage, than allow itself to be taxed for such a purpose, and you cannot compel it, without the aid of the black man. The North will insist, at least, on scaling your securities down by the actual money value in the world's market of the paper that was invested in them. It will damage your credit by quarreling with your schemes of revenue. Knowing that taxation is always unpopular, and particularly among a people so unused to it as ourselves, it will at least flatter and delude the multitude with illusory promises of relief, and with the aid of a united South, will, at the next turn of the cards, win its way back to power, and enter once more upon the possession of the Government.

"But the mischief will not end here. There is another debt that numbers cannot compute, incurred in the baffled attempt to overthrow this Union, and diffused throughout the entire South. There is, besides, a claim yet dormant for the value of the slaves made free by the proclamation. It may seem to some extravagant to talk of these, but it is no more extravagant than many other things that we have witnessed, and among them the assertion of a right to return to these Halls as though they had not sinned, and the presumptuous arrogance that has already taken our Constitution in charge, and undertaken to arraign our acts of self-defense against their treason, as violations of that instrument. Admit these men—ignore their crimes by your votes here—give them your confidence and the eventual mastery—as before, and your public credit will deservedly receive a shock that will tumble it into ruins. Readmit them here, and every prudent man will endeavor to get rid of your securities. No sharp-sighted money-lender will trust a Government so administered. It will be in vain for you to profess in joint resolutions, that you do not intend to pay any of the debt of the dead confederacy, or of the claims of the living slaveholder. The world will not believe it. It will say you mock it, when the makers of that debt, and the disloyal slaveholder himself, shall be exalted by your votes into legislators, to co-operate with the party here that has decried your obligations, and declared them to be worthless. The assumption by you of the one, and the payment of the other, would be but a logical sequence. If the makers of that debt are decided to be worthy of honor and trust in this Government, it will be an estoppel against the assertion that there was anything essentially

immoral in hiring assassins to take our lives, or anything in reason to prevent the payment of the wages of their iniquity. It will be taken for granted that when you make a legislator of the criminal, you intend to pay his debts of honor at home. You may protest that you do not, but it will point you to these acts, and scoff—ay, it will scoff—at your empty protestations, as no more than sounding brass and tinkling cymbals.

"But before I have done, allow me to come back once more to the great conflict of power—the gigantic and overshadowing issue—which has been forced on us and on the country, by the process of restoration which it has pleased the President in the exercise of his own judgment to adopt. There are other considerations that demand our care beyond the mere rehabilitation of the conquered States. It is for us to see that, in the execution of the guaranty, the Federal Republic itself shall receive no detriment, and undergo no change. There are symptoms, unquestionably of an alarming nature—developed, of course, by the high stimulus under which it has just been working—that forebode a serious disturbance of its balances—a revolution equivalent to a change in its organic structure, if not watched narrowly before it is too late. The time has now come to check those tendencies, which a condition so unnatural has so largely encouraged. With a Union newly and doubly imperiled by a policy that, ignoring the sentiment of the loyal States, has thrust us an immeasurable distance back from the position which we occupied when the camp-fires of our legions were blazing along the heights of the Appomattox, by not only leaving treason and murder to go unpunished, but warming the former into life and hope and strength, by withdrawing our troops, and endowing it with the power of reorganizing its broken columns for a fresh assault, and with the great problem of the restoration of its dissevered members complicated with another and perhaps a greater, in the tremendous question whether all these heterogeneous elements are to be flung into the crucible, and fused down under the fierce flames of war into an elective monarchy, it seems to me, with all due respect to the President, that we have reached a crisis in our affairs, when it behooves the people to look to their securities, and their Representatives here to resume the government of this nation, and to say to the advancing tide 'thus far and no further.'

"Standing, as I do, upon the traditions of the fathers—upon the radical but conservative maxims of republican liberty—upon the great principles that have been consecrated by the struggles of more than two hundred years—I cannot but tremble for my country when, in addition to all this, I hear the national

Representatives instructed by other than their lawful masters in regard to their duties here; when I find myself semi-officially advised by the executive head of the nation, who has just been thanked by a rebel Legislature for the act, that amendments to its fundamental law, proposed by its delegates here for its security, are unnecessary, or inadmissible, or entitled to no more respect than the resolutions of a town meeting, while bills that have passed this House, and are now actually depending in the Senate, are made the subject of public discourse and animadversion at the other end of the Avenue; when I hear a high officer of that department confessing and justifying the exercise of a *dispensing* power over our laws, in the employment of traitors, and the payment to them of moneys wrung from the sweat of the toiling millions of the loyal North; when I see members of both these Houses ready and anxious at such a time to abdicate their rightful powers—as a Legislature, not by a harmless reference to a committee of their own bodies—but by championing their own disability, and flinging down their crowns at the footstool of executive power; when I hear on this floor, from men who opposed the war throughout, and now, by a logic which I do not question, support the policy that gives the victory to the enemy, the appeal of the people to their own Congress compared to the howls of a drunken populace at the doors of the revolutionary Assembly of France, that in the name of liberty flooded its capital with blood, and in the name of religion dethroned the monarch of the world; when I read in newspapers controlled by gentlemen of this House who have discovered no sensibility to attacks upon its own privileges, the mere assertion of a right on its part to express an opinion in regard to the disposition of our troops, with no organized enemy in the field, denounced as an invasion of the prerogative; when I hear even the suggestion of the nation's sentiment in regard to the appropriate doom of the traitor chiefs, who now stand impeached before the world of a connivance in the starvation of our soldiers, and the butchery of our President, reprobated in the same way by public journals in the confidence of the Government; and when, to crown all, my very vision is blasted by appeals to the Executive from the disloyal papers of the North, to employ that patronage which the loyal people have alone bestowed on him, to coerce their Representatives into submission to his views, and, failing that, to enact the *rôle* of another Cromwell or Napoleon in this Capitol, while an answering shout comes back upon the southern breeze, that the bayonets of the soldiery, who flung that despotism to the earth must be invoked to reinstate it here. I think I am no alarmist. I am

not apt to indulge in gloomy auguries in regard to the future of a nation that has outlived so many blunders, and been so often ransomed by an Almighty arm. The proverbial honors of a prophet of evil have no attractions for me. Poesy has told us the story of Cassandra. History has vouchsafed to hand down to us the name and fate of the madman who ran up and down the streets of Jerusalem crying 'Woe! woe!' while the armies of Titus were encamped about its walls. But if I stood alone on this floor, and it were my last utterance, holding the high trust which God has given me, with a nation in travail, and in view of the dark portents that cloud the horizon, and shake the very atmosphere around us, I would say to the people, 'Awake from your false security, or prepare yourselves for another holocaust. Your enemy still lives. His "impaired vitality" has been restored. Red-handed treason rears its head as proudly and defiantly and insultingly as before. It menaces your capital. It claims to dictate to your President. It presumes to use the very organs of your Government to denounce your attitude as a revolutionary one, and to arraign your servants here as though they were in rebellion against the South. It moves upon the citadel where your defenders are entrenched. See that no warder sleeps, no port is left unguarded. Look to it that no sentinel unbars your gates. Steel the hearts of your defenders against the weakness that would betray like treason. See that their mail is proof—no joint agape, no rivet out of place. See that no Trojan horse, filled with armed men—no Tennessee with fair outside, but big with "pestilence and war"—shall win its way within your walls. When these great criminals do return, if ever, let it be only through the door that you shall indicate, and with such infrangible and irreversible securities as you only have the right to demand.' This is my position. Here I have taken my stand, and by the help of God I will maintain it to the end. Others may falter in the trial, but through me no right shall be abridged—no privilege surrendered—no single leaf plucked—no jewel torn from the crown of the representative body."

This address produced one of the greatest impressions ever made upon the House. The correspondent of the *Pittsburgh Gazette*, under date of February 16th, gave a column to it. Among other things he said:

"To say that this brilliant, bold and remarkable oration created, and continues to excite a profound sensation, is but poorly to depict its telling and thrilling effects. In beauty of

diction, appropriateness of style and scholarly elucidation, it charmed those of the finest taste. If it has a fault at all, it is the opulence of its ideas, and in the golden exuberance of its imagery. There are many passages in it which remind us of Burke; others again which recall the best effusions of Sheridan. It, however, Mr. Williams has ever adopted a favorite or a model, it is most unquestionably the former.—That I may express my meaning more clearly, I shall take the liberty of introducing a comparison. It is this: What Mr. Sumner's great oration was in the Senate, Mr. Williams'—though more successfully—was in the House. It was my good fortune to hear them both. Aiming, in the main, at the same objects, agreeing, if not fully, yet so in sentiment, and glowing with the same ardor, born of deep-rooted conviction—they yet approach the goal from different starting places, and by widely separate courses. Mr. Sumner has the regular order, the studied method, the lucid argument, and the flowing silvery cadences of the great Tully. Mr. Williams, at first view, seems to lack order and method in the arrangement of his theme; yet, upon close examination, the procession of his thoughts will be found to be lucid and natural. In a number of his impassioned bursts, he resembles, in point of daring, dash and vehemence, some of the finest periods of Demosthenes. As an instance I refer to his defense of the rights and powers of Congress, in which he exclaims—'*It is here only, in these Halls, that Liberty can live.*' And again, in reference to Pennsylvania, his own great state, he utters these truthful words—'*She bids her sons, whom she has placed on guard at the Capitol in this hour of the nation's trial, stand faithfully, as did her heroes in the bloody trench, by their trusts as Representatives, and resist with jealous watchfulness, every attempt from whatever quarter to encroach upon the just powers which she has delegated them.*' * * *.—Favorably known and highly prized as has been Mr. Williams in the comparatively limited circle in which he has moved, this speech will prove for him a leap into the fore-front in the gallery of our most illustrious orators. Even gentlemen disagreeing with him—persons, however, of excellent culture and taste—have been heard to declare that—'if he should make no other effort, this one will render him famous.' This contribution to American eloquence will certainly cause his name to become a household word. Without any exaggeration, Messrs. Editors, the praise bestowed upon it is really wonderful. In the generations to come, the young men of the Republic will fondly recite his charming sentences to enraptured listeners. * * * For two hours and a half he held the House and galleries spell-bound. Twice was his time

extended without a grumbling whisper. On the floor clustering around him, were prominent Senators and distinguished officials; whilst men of the House, celebrated for their intellectual ability—such as Boutwell, Bingham, Shellabarger, Stevens, Schofield, Kelley and Conkling—lingered on his majestic utterances with a delighted attention, which, never for an instant, flagged. And when he concluded, with a peroration of rare and magical force, the applause was such as those walls had never before given an echo to. It was renewed from floor and galleries again—a dozen times—with a heartiness and emphasis that cannot be mistaken nor forgotten. As he finished, members rushed forward to grasp his hand, strangers hurried from the galleries to be introduced to him, a buzz of admiration filled the hall and the corridors, and floated along with the dispersing crowds wherever they went." He adds in closing that Mr. Williams' speech had won him "a name, fame, and reputation as an orator and statesman, more splendid than that of any man in Washington, and which will eventually become as broad, expansive and perpetual as the cause of loyalty, equality and justice in this Republic."

"No [such] outburst of enthusiastic approval," said another reporter, "has ever been awarded to a member, and nothing but the passage of the amendment abolishing slavery, produced anything like it. Speaker Colfax had placed Mr. Thaddeus Stevens in the chair, and when Mr. Williams closed, and the cheering began, he used his mallet to assist, and adjourned the House without a vote, exclaiming: 'This House stands adjourned! Cheer as much as you please!' I fought my way to the orator, and, after congratulating him, passed over to Mr. Stevens, whom I accompanied home. On my way I asked him what he thought of the speech we had just heard. His answer was: 'I do not think I ever heard a better speech,' and after a moment added: 'I have never heard so good a speech.' * * * But the old statesman was not alone in his opinion. Governor Boutwell, one of the ablest men of the nation, came to Mr. Stevens during the delivery of the speech and said: 'This speech is as long as Sumner's, and abler; it contains all its learning without its pedantry;' and Gen. Butler, whom I visited this morning, told me that the same remark had been made to him by the Governor, with the advice to him to 'get a copy of that speech and read it often.'"¹

¹ A letter of February 11, 1866, indicates that either this report or the next one following was written by Judge Shannon, who was in Washington at the time.

² Unfortunately this clipping cannot be identified in source, although it is seen to be a Pittsburgh paper, probably the *Gazette*, and the context shows it to refer to this speech. Williams papers.

The friends of the President had a public meeting on the 22d of February (1866), at which Montgomery Blair described Mr. Williams' speech as the signal

If it produced this impression upon those who favored his position, it aroused equal feeling among his opponents and made him the man of the hour in the rising tide against the course of President Johnson. He became a dominant factor in the operations of the judiciary committee, and when, on June 11th, he reported from that committee a bill for the regulation of appointments to and removals from office the event was a blow at the President in his relations with his Cabinet, particularly his Secretary of War, Mr. Stanton. This was because, it need hardly be said, Congress was operating the Freedmen's Bureau through the Secretary of War to neutralize the action of the forced-labor features of the new State governments organized under the "restoration" policy of President Johnson; and also because Congress proposed to replace "restoration" with a "reconstruction" policy of its own. Furthermore, with a two-thirds majority in each House, irritated by not only Johnson's course itself, but even more by his invective against that body, Congress had both the purpose and ability to carry them out over the President's veto. In March, Congress passed a Civil Rights Bill over his veto, as it had the extended Freedmen's Bureau Bill, and in June re-enforced this with the Fourteenth Amendment, which not only gave citizenship to the negro, but made citizenship of all white people lately in secession depend upon removal of disabilities by Congress. This latter removed the question of the unconstitutionality of the Civil Rights Bill which the President raised, but as no Southern State, save Tennessee, accepted this product of the first session of the Thirty-ninth Congress, the second session, which met December 3, 1866, found itself in open war with both President Johnson and his newly organized State governments in the South.

About the time this session began there was great interest throughout Pennsylvania as to who should be successor to Senator Edgar Cowan. On December 3,

for assault on the Chief Executive. Letter of February 25, 1866, from Mr. Williams to his wife.

A letter of March 6, 1866, says: "The President is lost to us. He is determined to have his own way, which Congress will not permit. What madness he may be guilty of next I don't know. Nothing would surprise me."

1866, the *Pittsburgh Gazette*, in an editorial, stated that no one but Mr. Williams had been prominently spoken of in that section. "Confessedly of superior intellectual ability and training, and of sterling honesty, he excites admiration, rather than friendship," it continued, and further added that although Stevens was superior in "ability to manage men and affairs," he was not so in capacity to deal with ideas. It seemed to think Cameron would be the successful name. An editorial in another paper said: "He [Williams] is one of the ablest and most sagacious statesmen in the country; he has proved to be a faithful Representative of his district; on all the great questions, which the loyal people of our own State and other States desire to be rightly and safely adjusted, he is reliable; the people know and can trust him; his increased majority at the last election indicates his increasing popularity; his extensive and varied knowledge of our national affairs, his unflinching devotion to the Right, his masterly powers in debate, and his clear, strong, grasping intellect and sterling integrity would be highly beneficial to, and would not fail to shed luster upon, our State."¹ A correspondent, referring to this editorial, added: "Follow the course of Mr. Williams from the organization of the Republican party, and we find him always in the front ranks, advocating those principles of Justice and Humanity which carried us safely thro' a four years' bloody war. Although a Radical in the true sense of the word, yet his radicalism never approached ultraism, but has been of such a character as to make him always right; and indeed sentiments uttered by him since the outbreak of the rebellion, and which were looked upon with distrust by many, seem now to have been uttered with a spirit of prophecy, as every word then uttered by him has become a matter of history. By his elevation to the position of Senator, the people of Pennsylvania would point to their Senator as the compeer of Webster and Clay. And we doubt

¹ Unfortunately this clipping and the next one cannot be identified as to paper and date, though it is plainly nearly contemporary with the *Gazette*.

Mr. Williams wrote a scathing rejoinder to Secretary of the Interior Browning's defense of President Johnson in the *Gazette* of the 1st of November, 1866, which attracted great attention.

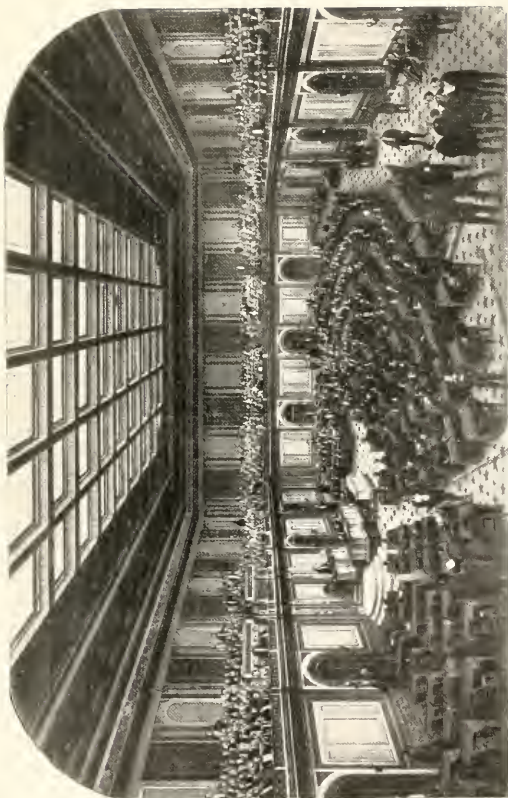
whether any speech delivered by either Webster or Clay, was received with such enthusiasm by Congress or more highly eulogized by the press, than was the speech of Mr. Williams on the subject of Reconstruction at the first session of the present Congress." As the *Gazette* intimated, however, Cameron was chosen.

When the members assembled Mr. Williams might have been seen in his seat, the sixth one back on the next aisle west of the central one—to the Speaker's left and the side of the aisle at his left also,—with Blaine in the second seat ahead, Garfield in the third seat to his right in the row in front of him, Boutwell in the same relation in the row back of him, Allison between him and Garfield, Wilson beside Boutwell, Kelley on the middle aisle in a seat corresponding to that of Williams, and Stevens in the fourth seat to Blaine's right—not to mention more of this distinguished body. He called up his bill on Removals from Office immediately on the 5th instant and made another speech of great force, which illustrates some phases of his power at its best estate.¹ It undoubtedly contributed as much to his scholarly reputation as any address of his before that body, and without doubt secured the passage of this strategic measure. He believed the bill would make impeachment unnecessary, although, in a letter of the 8th instant, he says: "There is a strong disposition, I think, to impeach & remove the President. Nobody has any respect for, and nobody goes to see him. If we could feel sure of the Senate there would be no hesitation about the matter."

"Mr. Speaker," he began, "with the indulgence of the House I will now proceed to state the objects of the bill reported by your committee, along with some of the considerations which have commended it to their judgment as a measure of great national concern, and one which falls within the constitutional powers of this Congress.

"The first section enacts that no officer who has been appointed by and with the advice and consent of the Senate shall be removable except by the same agencies, with the proviso, however, that in case of disability or misconduct in office during the recess of that body, the President may, with the

¹ *Congressional Globe*, Thirty-ninth Congress, 2d Session, Part 1, p. 22.



THE NATIONAL HOUSE OF REPRESENTATIVES

Half-tone of a Bohn lithograph of 1866 in the Congressional Library



advice of the Attorney General, suspend the incumbent and commission another until the next session, at which it shall be his duty to report the fact, along with the causes of removal, and the name of the officer so appointed, or such other person as he shall choose to nominate; and that in case of the refusal of the Senate to approve the act, the officer so suspended shall resume his functions, without any allowance, however, of compensation in the meanwhile.

"The second section provides that no officer renominated shall continue to hold after his rejection, and that the party so rejected shall not be again appointed.

"The third section I propose, with the approbation of the committee, to strike out, and insert two others—one to the effect that where a vacancy happening during the recess may have been filled by the President, it shall be his duty to make a nomination before the end of the next session, and in case of the nonnomination of any other person or persons than the one so commissioned, and the refusal of the Senate to advise and consent thereto, the office shall not be considered as vacant upon its adjournment, but the person so commissioned shall continue to hold and enjoy the same during the recess, and until he shall be either nominated and rejected, or duly superseded by a new appointment; and the other providing that the heads of Departments shall hold their offices for the term of four years unless removed with the concurrence of the Senate; and shall moreover nominate, and by and with the advice and consent of the Senate appoint, all their assistants and subordinates, to hold for the like period, unless removed in the same manner.

"The bill rests, therefore, on the hypothesis that the power of removal does not rightfully belong to the President alone—even if he can be properly claimed to have any share of it, under the Constitution—and cannot be safely left with that officer without any restraint upon its exercise; and this as a general principle, and without any reference to the merits or demerits of the existing functionary. It proposes to improve the rare advantage of a dissociation between the party in power here and the President of its own choice, for the correction of a great evil, by a surrender and dedication of the spoil which that party may be supposed to have won, upon the public altar, and for the nation's benefit, through all coming time.

"It aims at the reformation of a giant vice in the administration of this Government, by bringing its practice back from a rule of its infancy and inexperience, resting mainly, perhaps, on its unbounded confidence in the personal virtues of its first

Chief Magistrate, to what are believed to be the true spirit and meaning of its fundamental law.

"To accomplish this object it disturbs no title, and attacks no judicial precedent. It strikes not even at any prescription with 'the hoar of innumerable ages' upon it. It contemplates but the review of a legislative opinion of yesterday, under the lights that a miraculous growth and an era of revolution have shed upon it, along with the resumption of a constitutional power that has been heretofore surrendered.

"Nor is this the first occasion on which that opinion has been questioned. It was anticipated by a denial of an authoritative character. It was the opinion of a divided court. There has been no time, I think, at which its soundness has not been disputed. It has been subjected again and again to the most damaging criticism by the best professional minds of the nation. It has found no favor anywhere, I think, upon the score of reason. It is not even old enough to be venerable. There is nothing irreverent, therefore, in its impeachment, even though time might be supposed to consecrate error, or a prescription to run against truth or reason in the forum of the statesman.

"To estimate justly, however, the weight to which it is entitled, it is necessary to show its precise extent, the circumstances by which it was attended, and the argument on which it was sustained, before proceeding to discuss the question on original grounds and with a sole reference to the Constitution itself, on the hypothesis that it is still an open one.

"It is to be noted, then, that while it was objected widely in advance of the adoption of the Constitution, by those who were opposed to it, that it would give to the Executive the powers of a King, it does not seem even to have occurred to those who were the most ingenious in exploring and exaggerating its defaults, that there was anything in it which could be construed to bestow on the President the eminently regal power of displacing the officers of the Government at his own individual will. It does appear, however, to have been argued by its friends, in answer to the objection of instability through frequent changes of administration, that inasmuch as the Senate was to co-operate in the business of appointments, and 'its consent would therefore be necessary to *displace* as well as to *appoint*, a change of the Chief Magistrate would not occasion so violent or so general a revolution as might be expected if he were the sole disposer of the offices.' (Federalist, No. 77.) The undisputed assumption, therefore, that the President could not remove, was one of the arguments on which the briefness of his tenure and the frequency of elections were defended, and the instrument itself

commended to the support of the people of the States by the leading spirits who presided at its formation.

"When the first Congress met, however, to inaugurate the Government then newly formed, the question arose at once, on the establishment of the Department of Foreign Affairs, whether the head of that bureau should be made, in terms, removable by the President; one party claiming that the power of removal was included in the power to appoint, and could, therefore, be exercised only in connection with the Senate, and the other, with Madison at its head, asserting with equal confidence, that it was a strictly executive function, and as such, conferred on the President by the first section of the second article of the Constitution. The result was, not a decision, but what better deserves to be characterized as a compromise or evasion of the question, by the substitution for the words, 'to be removable by the President,' of the phraseology, 'whenever the said principal officer shall be removed by the President, or in any other case of vacancy, the chief clerk shall take charge of the papers,' &c.; a result which by no necessary inference imported anything more than an implied or permissive authority, which the Opposition was ready to accord to the President on personal grounds, but which the friends of that officer, claiming it under the Constitution as his *right*, were not willing to accept as a grant. In this shape, however, after a protracted contest and a close division in the House, the bill was passed through committee in the Senate by the casting vote of the Vice President, and finally by one majority. It is worthy of remembrance, however, that the Vice President was John Adams, and the President himself a man without 'that sin by which the angels fell,' who had never betrayed a trust, or abused a power; and that, moreover, the weight of the argument turned on the improbability of future degeneracy, and the liability to impeachment in case of possible corruption or profligacy in future times. But succeeding Congresses went still further, in making the tenure of offices, over which the Constitution had endowed them with exclusive and unquestionable control, dependent on the pleasure of the Executive, and the nation acquiesced under an experience of forty years, which seemed to justify the confidence that the virtues of its first Chief Magistrate had inspired. It was not until it was startled from its security in 1829 by the new and atrocious doctrine, that the public offices were but the lawful plunder of contending factions, and the profligate cry that 'to the victors belong the spoils,' that it began seriously to inquire into the wisdom and lawfulness of a practice that had grown up *sub silentio*, and apparently fastened itself upon the

Government. The result of that inquiry, however, was a general conviction that there was no warrant for it in the Constitution, and no more of force in the argument that had been allowed to prevail, than there was of the prophetic spirit in the statesmen who were so prodigal of their assurances that no evil could flow from it, and that the corrective would be an easy one. That conviction was shared by the very ablest men of the nation, who had been trained in the study of its Constitution under the light of nearly half a century's experience, and were agreed upon the necessity of such a reform as would bring the Government back to its true principles. Mr. Webster, in a speech made by him in the Senate in 1835, holds this emphatic language:

"After considering the question again and again within the last six years, I am willing to say that in my deliberate judgment the original decision was wrong. I cannot but think that those who denied the power in 1789 had the best of the argument. It appears to me, after thorough and repeated and conscientious examination, that an erroneous interpretation was given to the Constitution in this respect by the decision of the First Congress."

"And again:

"I have the clearest conviction that they [the Convention] looked to no other mode of displacing an officer than by impeachment, or the regular appointment of another person to the same place."

"And further:

"I believe it to be within the just power of Congress to reverse the decision of 1789, and I mean to hold myself at liberty to act hereafter upon that question as the safety of the Government and of the Constitution may require."

"The like opinion was obviously held by both Kent and Story, and the same is inferable from the report made by Mr. Calhoun to the Senate, on the subject of removals from office, in 1835. If earlier authority were necessary, however, it may be found, not only in the *Federalist* but in a letter of Alexander Hamilton to James McHenry, then Secretary of War, written in 1790, and about ten years after the debate in Congress that is supposed to have settled this question.

"It was in vain, however, that the statesmen of a later period, in view of the enormous abuses that threatened to overthrow the just balances of this Government, and to dwarf all its other departments under the overshadowing growth of the

executive, pointed out the error into which we had fallen, and the rocks upon which the ship of state was driving with such headlong impetuosity. A triumphant party, supported, as it was almost sure to be, by an unscrupulous majority in both Houses, and looking to the offices of the Government as its lawful spoil, was sure to resist, and resist successfully, every attempt to get back to the true reading of the Constitution; while this power of resistance was equally sure to be strengthened by the increase of the means of corruption in the multiplication of the Federal offices. That increase was, even in ordinary times, but a natural and necessary result of our marvelous growth as a nation. The exigencies of the war through which we have just passed, and the new and heavy responsibilities it has left behind it, swelling our armies beyond example, and necessitating the establishment of a new department of the public service, that permeates the land, and enters the castle and unlocks and inspects the cupboard and the strong-box of every citizen, have administered to it an impulse that has carried it beyond the remotest point it was likely to have reached in the course of another century. The Executive of this nation, with its own tacit consent, now wields a power over the fortunes of its people, that would, in ambitious hands, and if adroitly used, be sufficient, not only to buttress and sustain a throne, but to make him the envy of the proudest potentates of Christendom. He has not hesitated to proclaim aloud that he intends to use it to enforce his will; and upon this hint I now propose to strip him of the ability to make good his menaces, by reasserting the authority of Congress, and taking back into its own custody, and for its own defense, the jewel with which it has so generously and improvidently parted in the honeymoon of its existence, when all was confidence and love.

“And now as to the extent of the decision, the length and breadth of the swaddling-cloths that are supposed to fit us now, and cramp the movements of a giant State in the direction of reform. Confounded as it has been with a practice that has only followed out its spirit, its effect, I think, has been greatly magnified in the general estimation. In itself, and apart from the debate to which it gave rise, it decides absolutely nothing, except that *in the absence of all legislation*, the power of removal, in cases of appointments confided to the Executive by the Constitution, belongs to him alone. It rules nothing as to cases where the term is fixed, or as to *inferior* officers, where the mode of appointment is left entirely with Congress. The question involved was as to the heads of the Departments only, and although the line of demarkation has never yet been authori-

tatively drawn between the superior and inferior officers of the Government, it may be safely assumed that as the head—which is the constitutional phraseology—is superior to all the other members of the body, so these functionaries are to be classed among the superior officers whose appointment is vested by the Constitution, though only *sub modo*, in the President. There was no question, however, as to the power to regulate the duration of the office. It stood indefinite on the bill. In that condition it was not disputed that the tenure must be either at pleasure, or during good behavior. The Constitution had assigned the latter to no other officers except the judges, and the inference was irresistible that all others must hold their places by the former, unless Congress should give some other duration to their offices. (2 Story's Commentaries, sec. 1537; 1 Lloyd's Debates, 511, 512.) The point in dispute was only at whose pleasure they were to be held; whether at that of the appointing power, or of the President alone. And this accords precisely with the statements of both Kent and Story, the two leading commentators on the Constitution, and unquestionably the highest authorities in the country. The former describes it as 'a question whether the power of removal in case of officers appointed to hold at pleasure, or *where the duration is not specially declared*, resided anywhere but in the body that appointed.' (1 Kent's Commentaries, sec. 14, pages 308-11.) The latter puts it in the same way, by condensing the whole issue into the two great questions: first, to whom, *in the absence of all legislation regulating the duration of the office*, does the power of removal belong? And second, if to the Executive, in cases confided to him by the Constitution, can Congress give any duration to the office not subject to the exercise of such power? (2 Story's Commentaries, sec. 1537, citing 1 Lloyd's Debates, 511, 12.) The latter of these two questions has not, he says, been raised, because all our legislation has recognized the executive power of removal as in full force, and the case here rests, of course, only on a silent practice, which had the recommendation of convenience, and was maintained by the harmonious co-operation of the several departments of the Government, and a well-authorized confidence in the Executive, which is now greatly disturbed, if not altogether destroyed. As regards, however, the former of these questions, they are equally agreed that the decision was an anomalous one. Judge Story speaks of it as 'constituting the most extraordinary case, in the history of the Government, of a power conferred by *implication* on the Executive, by the assent of a bare majority in Congress, which has not been questioned on many other occasions.' (2 Commentaries,

1543.) Chancellor Kent, referring to the fact that it had never been made the subject of judicial discussion, and that the construction given in 1789 had continued to rest on 'this loose, incidental, and declaratory opinion of Congress,' and although suggesting that it might now be considered 'firmly and definitely settled,' is constrained to speak of it, as 'a striking fact in the constitutional history of our Government, that a power so transcendent as that which places at the disposal of the President alone, the tenure of every executive officer appointed by the President and Senate, should depend on *inference* merely, and should have been gratuitously declared by the First Congress in opposition to the high authority of the Federalist, and supported, or acquiesced in, by some of those distinguished men who questioned or denied the power of Congress to incorporate a national bank.' (1 Kent's Commentaries, sec. 14, pages 308-11.) The Chancellor does not speak with the precision of the lawyer, and forgets his own statement, when he describes it as a power which places at the disposal of the President alone the tenure of *every* executive officer appointed by the President and Senate. He does show, however, the training of the judge, in his remark that the construction based on such foundations might now be considered as 'firmly and definitely settled.' Nobody but a man with a religious reverence for precedents, could have supposed that an ephemeral practice of forty years' continuance, upon a question of governmental power so important as this, could settle forever the meaning of the fundamental law of a great State. It required six centuries of struggle to settle down the constitution of England on the basis of the Great Charter, and no parliamentary precedent of the reigns even of the Plantagenets or the Tudors, was allowed to stand in the way of the progressive movement that culminated in the Revolution of 1688.

"It is worthy of remark, moreover, that neither of these justly distinguished jurists has intimated a doubt as to the power of Congress to regulate the duration of the *inferior* offices in such a way as to take them entirely out of the control of the Executive. Judge Story, on the contrary, observes that 'as far as Congress has the power to regulate and delegate the appointment of inferior officers, so far they may prescribe the term of office, the manner in which and the persons by whom the removal as well as the appointment to office shall be made.' (2 Story's Commentaries sec. 1537, citing *Marbury vs. Madison*, 1 Cranch, 137, 155.) And again: 'If there has been any aberration it will be difficult, perhaps impracticable, now to recall the practice to the correct theory. But at all events it will be a consolation to those who love the Union, and honor a

devotion to the patriotic discharge of duty, that in regard to inferior offices, which probably include ninety-nine out of the hundred, the remedy for any permanent abuse is still within the power of Congress by the simple expedient of requiring the consent of the Senate in such cases.' (*Ibid.*, sec. 1544.) And Chancellor Kent indorses this in a note, referring to the frequency of the exercise of his power by President Jackson, as having created serious doubts as to the propriety of the concession by the First Congress, and remarking that a high authority had declared it to be in the power of Congress to correct this by placing the appointment of inferior officers in other hands. (1 Kent's Commentaries, 309-11, citing 3 Story, 394-7.)

"And this is in accordance also with the legislation of the Government on more than one occasion, although it is assumed by those who rest upon the practice, that it has been invariably the other way. The early case of *Marbury vs. Madison* proves this beyond dispute. Marbury was a justice of the peace for this District, appointed by John Adams just before his retirement, under the authority of an act of Congress of 1801, fixing the term at five years. President Jefferson withheld the commission after it had been signed and registered. If he could have removed the officer, it would have been idle to stand upon the delivery of the commission, but it was assumed by the court, and conceded on all hands, that he was not removable, except for cause, until the expiration of his term.

"But even in the case of an office determinable at pleasure, as that of deputy marshal, an act passed by the very Congress of 1789 itself, not only recognizes and asserts the right to take the power of removal from the President, but to sever it from the appointing power itself, by vesting it in the judges of the circuit and district courts. (Act of 24th September, 1789.) And in a still later case, (act of March 3, 1865, section twelve,) it has been provided that where an officer in the military or naval service, who may be dismissed by the authority of the President, shall demand a trial, he shall convene a court-martial, and if they shall not award the punishment of dismissal or death, or the court shall not be convened within six months, the order of dismissal shall be void; and this notwithstanding the fact, that the punishment by impeachment is confined by the Constitution to *civil* officers, and therefore, by necessary inference, all others are removable in a different way, and although, too, the President is, by virtue of his office, the Commander-in-Chief of the Army and Navy of the United States.

"To show, moreover, that this was the interpretation given to the legislative action of 1789, and is in accordance with judicial opinion in the States, upon analogous provisions in their own constitutions, it is only necessary to refer to a decision of the supreme court of Pennsylvania, made as early as 1820, and when its judges were unusually eminent, to the effect that the tenure of ministerial offices in general is during pleasure, *unless the law establishing the office orders it otherwise.* (Com. *ex relatione vs. Bassier, &c.*, 5 S. & R., 457.)

"And now, having, as I think, ascertained and defined the precise extent of the decision supposed to have been made in 1789, let us proceed to look into the argument by which it was sustained, and ascertain what the Constitution itself has to say on this subject.

"It is agreed, then, on all hands, that the power of removal must reside somewhere, when the term is indefinite. This bill denies it to the President alone, in all cases where the Senate has shared in the appointment; or, in other words, declares that nothing short of the power that makes shall unmake—which is but the logical result of the doctrine of the minority in 1789, that the power to remove is included in or but an incident to the power to appoint; a doctrine, which is now sustained, as I shall show hereafter, by the authority of the Supreme Court of the United States.

"On this point, however, the Constitution is silent, except so far as it is made a part of the judgment in cases of conviction on impeachment for 'treason, bribery, or other high crimes and misdemeanors.' Nobody has ever pretended that it was anywhere expressly conferred but in this single case, where it is lodged exclusively with Congress. If it exists, therefore, at all, it is only by *implication or inference.*

"Taking it, however, to rest, as claimed, either upon the power to appoint, as an inseparable incident thereof, or on the general assignment of executive powers to the President alone, it becomes important to look into the provisions of that instrument which bear upon these two subjects.

"And first, it is to be observed, that the Constitution nowhere vests the appointing power in the President alone. It authorizes him to *nominate*, but only by and with the advice and consent of the Senate to *appoint*, the officers therein described, and 'all others that might be established by law.' This, therefore, is the general rule.

"The exceptions, if they can be so termed, are first, that 'in cases of vacancy happening during the recess of the Senate,' and when that body is, of course, in no condition to be con-

sulted, and to co-operate; or, in other words, where an appointment is impracticable, for the time being, under the rule, the President shall, not appoint, but merely supply the interregnum, or 'fill up the vacancy' by a commission which shall only endure 'until the end of the next session,' or until they shall be in a condition to exercise their power of concurrence in or rejection of an appointment: and secondly, that in cases of inferior officers, the Congress may bestow on 'the President alone,' or the heads of Departments, or the courts, the privilege of appointing without the advice or consent of the Senate, which is a recognition of the rule, and makes a solemn act of the Legislature necessary to dispense with it even in inferior cases.

"It would seem, therefore, too clear for dispute, if it has not the force of a self-evident proposition, that the framers of the Constitution intended to place an effective check upon the President in this important matter, by denying to him in all cases the right to wield this formidable power alone, except where the accidents of administration might render it temporarily necessary, or the insignificance of the place might make it safe, in the judgment of the Legislature, to intrust it to him from time to time.

"It is claimed, however, in the absence of any direct authority to appoint, and in the face of the strongest implications to the contrary, that the President may practically defeat the obvious purpose of the framers of the instrument, by the exercise of the power to *remove* in the recess, and thereby *create* a vacancy, which he may fill up without the concurrence of the Senate, or by appointing to an office already full, and thus accomplishing by indirection the very same thing.

"But what does the Constitution say on the subject? Why, only that 'the President shall have the power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions that shall expire at the end of their next session.'

"The power, then, is not to appoint, but to 'fill up.' The vacancy is not one that may be created, but one that may 'happen.' And the commission is not one that is indefinite, but one that shall expire, by its own limitation, at the end of the next session, so as to give the President the whole of that session to nominate.

"Upon this transparent phrasology one would think that there could be no ground left for dispute. The case provided for is that of 'all vacancies that may happen.' Hap is but another word for chance. *Ex vi termini*, it imports *accident* or *contingency*, without any agency on the part of the President in

bringing it about. And such is the construction which it has received from the best intellects of the nation. Mr. Hamilton, in his remarks in No. 77 of the *Federalist*, in the same language precisely, as applied to Senators, describes it as 'an express power given in clear and unambiguous terms to fill *casual* vacancies.' And again in his letter to James McHenry, ten years afterward, he asserts that they imply *casualty*, and denote 'such offices as, having been once filled, become vacant by *accidental* circumstances.'

"And in accordance with this idea, when Mr. Madison, during the recess of 1813, appointed ministers to negotiate the treaty at Ghent, upon a question made whether it was the case of a vacancy or a new creation, the Senate is reported as having entered its protest against it.

"Again, on the 20th April, 1822, it was held by the same body, that the President could not create the office of a minister, and make appointments during the recess, it being their understanding that the vacancies provided for were such as occurred from death, resignation, promotion, or removal; that the word 'happen' had relation to some casualty not provided for by law, and that if the Senate was in session when the office was created and no nomination then made, he could not appoint during the recess, because it was not a vacancy, happening at that time. In many instances where new offices were created a special power had been conferred on this account to fill them during the recess, and it was then said that in no other instances had the President filled such vacant offices without special authority of law. (2 *Story's Commentaries*, 1559, citing *Sergeant on the Constitution*; 2 *Executive Journal*, 515, 500; 3 *Executive Journal*, 297.)

"And this opinion is affirmed by the second section of the act of 9th February, 1863, which provides that no money shall be paid out of the Treasury as salary to any person appointed, during the recess of the Senate, to fill any vacancy in any existing office, which vacancy existed while the Senate was in session, and is required by law to be filled by and with the advice and consent of the Senate, until such appointee shall have been confirmed.

"And to show, moreover, that the earlier practice had conformed to this theory, may be added the remark of Mr. Calhoun in his report to the Senate in 1835, on the corrupting influence of the President's power of removal, that 'so long as it was the practice to continue in office those who had faithfully performed their duties, this patronage, in point of fact, was

limited to the mere power of nominating to *accidental* vacancies, or newly created offices.'

"It is perfectly obvious, moreover, from the tenure of the commissions required in such cases, that this exceptional provision was only intended to meet the case of an accident occurring at a time when the Senate was not at hand to be consulted. To *supply* a vacancy is one thing, and a thing easily understood; to *create* a vacancy is a thing so different, as must have necessitated a different phraseology, and suggested a more stringent rule. Nobody would pretend that a removal, by the usual process, by the President, while the Senate was in session, was a case of vacancy *happening* at that time, or indeed any case of vacancy at all. A new nomination approved by it, in a case where the term was not fixed, would operate, no doubt, as a *supersedeas*, by determining the office, but without making any vacancy whatever; and this I believe is the way in which the thing has been generally done. I do not know that there are any instances wherein a removal has been made in the first place, except, it may be, where the office was made expressly determinable at the will of the President. If he may make a vacancy in any case, he may do it in all, divest the Senate of its advisory power, and make the exception the rule. All he has to do is to withhold the appointments so made until the expiration of the session, or, upon rejection of any of his creatures, recommitment them after the adjournment, and thus perpetuate the power in himself, in defiance of the clear intention of the framers of the Constitution. And this he has actually done to such an extent, that if not seasonably checked, the Senate itself will soon have practically ceased to share all that part of the appointing power which it may not already have substantially surrendered by its complaisance.

"Nor does it seem improbable that this has been the studied purpose in high quarters, in view of the imputed illegitimacy of the body which is now supposed to be 'hanging, as it were, on the verge of the Constitution.' The law officer of the Government has just been asked, with special reference, perhaps, to the act of 1863, whether a vacancy happening *during the session*, is not a vacancy happening *during the recess*; and he answers in the traditional spirit of an Attorney General, with an opinion that blots out of the Constitution the words 'that may happen during the recess of the Senate,' by making it entirely indifferent what may be the causes by which that vacancy is produced, or at what time it may occur. Nay, more. The very commissions now issued will be found to run, not only at 'the pleasure of the President,' where the tenure is indefinite, but even in

cases of appointments made during the recess, where the very terms are prescribed by the Constitution itself, are interpolated with the same anti-republican phraseology, in utter disregard of the express provisions of that instrument.

"To the whole claim, however, of so formidable a prerogative, it ought to be sufficient answer: first, that the Constitution nowhere confers any such power, except in the cases already stated, and that from this exception, by well-settled rules of construction, the inference is a legitimate one, that it was not intended to be exercised in any other way, in civil cases at all events; and second, that the exception which gives to Congress the authority to vest the appointments to *inferior* offices in the President alone, is as utterly irreconcilable with the idea that he can remove alone, and without cause, in the case of *superior* offices, as is the provision for impeachment and trial, with the notion of a summary ejection without any hearing at all.

"But, then, it is insisted that this mode of removal would be inconvenient, because the machinery is too elaborate for ordinary use, and would be entirely inadequate to meet the exigencies of a vast and multiplied service, and the many unforeseen contingencies that might necessitate the existence of a jurisdiction more summary and extended; and hence the illogical inference of a power in the President to remove where the Constitution itself has not spoken.

"I will not stop to examine the argument *ab inconvenienti*, even though so great a name as that of Coke may be invoked to show that it prevails in law, where one construction would be more mischievous than another. It may be inconvenient to impeach in all cases. It was hardly expected, perhaps, that it would be necessary. It may be inconvenient to the President and his southern friends, that he is not endowed with dictatorial powers, such as he has been claiming and exercising. It may be inconvenient to him that he cannot indulge the parasites who swarm around him, by the unrestricted use of the guillotine under which so many heads have already fallen. It would be certainly very convenient to him and his southern friends, but very inconvenient to the nation, that he should be allowed to do all the things that this bill is intended to prevent. But all this is only an argument in favor of a change in the law, or an amendment of the Constitution, which, in the view of the President, is not now amendable, for reasons that would dethrone Congress, and unseat himself.

"Is it, then, a necessary power? And if so, why? Because, it is said, the officer may prove incompetent or unfaithful, and the public interests may therefore require his dismissal. Granted

that they may. What follows? That *he* may remove him? That is a *non sequitur*. The result of an admitted necessity, without any constitutional provision to meet it, it would seem rather to be that the case was left to be provided for by law, than that a power so dangerous should be raised by implication in the President. If there be a necessity, Congress can provide for it, under its authority 'to make all laws which shall be necessary or proper for carrying into execution all powers vested in the Government, or in any department thereof.' It is a capital error to suppose that the Executive is endowed with the incidental power to legislate for constitutional defects which touch his office. To claim that it belongs to him, in virtue thereof, is no more or less than the assertion of a dictatorial power to the extent of the very terms used by the Romans in conferring it. If the President is to do everything which in his opinion the public interests may require, then every defect in the Constitution or laws is to be supplied, and every disproportion symmetrized by him. And this, it seems, is the opinion of the present law adviser of the Government, as expressed in his recent answer to the inquiry as to the power of the President to fill vacancies occurring during the session of the Senate. It is with him a *necessary* power, and though it may be so wielded, as he admits, as to oust the jurisdiction of the Senate entirely, he marches up to the *reductio ad absurdum* with a courage that might have graced a better cause, and thinks to put us off with the answer, that it is no objection to a power that it may be abused. If it had been an *express* power, the argument would have been a good one. Where, however, it is only *implied*, as here, a well-trained lawyer, who could forget his office in his profession, would have said at once that the possibility of such an abuse was a conclusive argument against the existence of the power. It would be asking, perhaps, too much, to expect that an officer who holds his life at the pleasure of the President should be found standing in the way of the prerogative in times like these. When was it ever heard that an Attorney General in High Prerogative times had faltered in the support of the most extravagant of the pretensions of the Crown? How many judges have proved capable of emulating the sturdy virtue of Sir Edward Coke, before the Act of Settlement that made their tenure independent of the royal will? Possibly there are men here who are prepared to indorse such slavish views. Every traitor in the South, and every Democrat in the North who sympathized with him, would doubtless agree to them, as they have agreed so generally, that the President might organize State governments, and ordain State constitutions, while we are

denied the humble privilege of suggesting amendments in the interests of liberty, and denounced as no better than 'tinkers'—I was going to say tailors—by the minions and upstarts, the pampered and insolent menials, who lick the royal hand, and look up beseechingly for the 'bread and butter' that are flung contemptuously into their hungry jaws.

"In default, however, of the arguments from inconvenience and necessity, is there anything in the suggestion that this power of removal is a part or incident of the power of appointment? If there were, it would not help the case, because the appointing power is nowhere lodged in the President alone—the power to act during the recess being a mere authority to fill up vacancies *ad interim*—and the power to remove, on this argument, could only be exercisable in conjunction with the Senate.

"But the Supreme Court of the United States has solemnly decided that there is, and has on this point affirmed the opinion of the minority in the Congress of 1789. The case *Ex relatione Heenan* (13 Peters, 230,) which was that of the removal, by the presiding judge, of a clerk of the district court of Louisiana, distinctly rules that, in the absence of all constitutional provision, or statutory regulation, it is a sound and necessary rule to consider the power of removal as incident to the power of appointment. The removal there was by the judge who appointed. Upon the theory of the majority the power would have resulted to the President.

"And here I might rest the argument with those who stand upon authority, and are willing to accept a judicial opinion in the place of a legislative precedent.

"But assuming that this power is but an incident, and so belonging to the Senate, in conjunction with the President, it is not only insisted that where no tenure is prescribed, the officer must necessarily hold at the will of the appointing power, but assumed that no other tenure is admissible.

"It is not necessary, however, that the tenure should be indefinite; and it is perhaps not safe, and not strictly in harmony with the spirit of our institutions, to leave it so, if the power claimed resides with the President, and may be exercised without cause, or without other reason than the want of personal subserviency to himself.

"The Constitution looks to the creation and establishment of all offices under it by the act of the law-making power, and in no case but that of the judges, and appointments made to fill up vacancies *ad interim*, undertakes to prescribe the tenure by which they are to be held. But the power to create an office involves, of course, the power to determine upon its duration and

duties, to say what it shall be and when it shall expire; the power, in short, to make all laws which may, in the judgment of Congress, be necessary and proper for its regulation, including the period of service and the causes of removal. I know no limitation on the power of Congress here, except in the assignment to the President, in all cases but those of inferior offices, of the right to nominate, and, by and with the advice and consent of the Senate, to appoint. Whenever an office is created of the superior class, that power devolves, under the Constitution, upon him, and cannot, of course, be taken away. But with this exception only, and the cases of judges, and of appointments to fill vacancies, their jurisdiction over the subject is absolute. If there be anything to restrain or limit it beyond this, it behooves those who so assert to show where it is to be found.

"It is a fair inference from the provisions just recited, that the framers of the Constitution intended to leave the question of official tenure in all other than the excepted cases to congressional regulation. To suppose that they designed it to be indefinite, and therefore determinable at the mere will of the appointing power, and without responsibility for abuse, even though that power were understood to comprehend the Senate, would be a violent presumption indeed. To conclude that they intended to make it determinable at the mere will of the President, either with or without cause, in view of the extreme jealousy with which that department was regarded, is absolutely incredible.

"I take it, therefore, that Congress may dispose of this question, even in the case of the superior offices, by defining the tenure and changing the character of the estate, so as, in effect, to substitute its own will for that of the President, by giving to it the form of law, in accordance with the principles on which this Government is founded. An executive will is only admissible in the case of a despotic Government, of which it is the very essence and expression. The '*sic volo, sic jubeo; stet pro ratione voluntas*,' is not the maxim for a republican State.

"But there is another ground—the one assumed by Madison, and perhaps the only one on which these royal pretensions have ever been plausibly defended—and that is, that the exercise of the power of removal, the same being in its very nature an executive function, falls necessarily within the meaning of that clause of the Constitution which declares that 'the executive power shall be vested in a President of the United States;' that all executive powers not denied or lodged elsewhere, are thereby vested in the President; and that every participation of the Sen-

ate is an exception to a general principle, and ought to be taken strictly.

"This argument assumes, in the first place, that the power of removal is essentially an executive power, as I understand it to be just now asserted by the Attorney General to be. I know no reason to warrant the assumption. Whether it be so or not, will depend, I suppose, on what the Constitution makes it. There is nothing in the act itself, that decides it to be a *ministerial* function only. It involves the exercise of a *discretion* that does not belong to ministerial officers. So far as the Constitution makes provision for its exercise, it gives it a *judicial* character entirely. True to the idea on which our institutions rest, it leaves nothing here to the mere will of the Executive. No man's fortune is made dependent on a caprice that would make him a slave. If an officer is to be removed, it declares in what manner it shall be done, and that it shall be only on sufficient cause, and with the privilege of an impartial hearing, which this bill is intended to secure. To infer, as seems to be imported by the argument, that it is an executive function, merely because the officer who is the subject of it may happen to be an executive officer, would be the most inconsequent of conclusions. If it were true, then the election or removal of a President, or a Congressman, or a judge, would be an executive, legislative, or judicial act, according to the quality of the subject with which it had to deal, and without reference to the manner in which the act might be performed. It is the manner of performance, however, that is to determine the character of the act. It is a possible case, I suppose, that a man may be legislated out of office, by repealing the law creating it, or making the tenure dependent on the will of Congress. Clearly a circuit or a district judge may remove the clerk whom he has appointed, because that power is held to be an incident of the power to appoint, wherever the tenure is indefinite; but nobody has ever claimed that the President can do it, or would think of calling the act an executive one. If Mr. Madison and the Attorney General were right, however, in claiming it as an essentially executive function, the decision in *ex parte* Heenan was erroneous, and the power belonged to the President alone.

"If, however, the assumption, that the power of appointment or removal was a purely executive one, was without warrant, as I think it was, there is an end, of course, to the argument based upon it, that the participation of the Senate was an exception to a general principle, and ought, therefore, to be strictly construed.

"But even though the function were, in its essence, an executive one, it does not then follow that it was conferred on the President, by the clause which vests the executive power in him, unless it can be held that all power that would be regarded as executive in England, passed by the general grant—as it is claimed to be—whether it was embraced within the scope and purview of the Constitution or not. Mr. Madison insisted that the clause in question carried everything that was not either expressly denied, or lodged in other hands. If it did, there is no prerogative of the British Crown that might not be claimed for him, because there are no negative words to restrain his powers. We must look, however, to the Constitution itself in order to interpret the intent of the grant—if it is to be so considered. It is bad logic to infer that anything passes by it that is not to be found in the Constitution at all, because that would enlarge the grant beyond the purview of the instrument. If he had qualified his statement, by saying that it carried everything within the scope and spirit of the Constitution, that was purely executive, and not denied expressly or by *implication*, he would have conformed to a rule of construction, that in the search for truth is universally recognized, and absolutely essential to light up the devious passages and darkened chambers, that so often perplex the inquirer in the exploration of the meaning of the lawgiver. There was no more reason for excepting an express denial than an implied one, and no excuse for the omission when he was arguing the case of an implied or inferential power. But to infer the existence of that power from language so general, without reference to the context, or the subject-matter, and in the face of an express provision pointing out the method of impeachment, is something in the way of argument, that not even the deservedly great reputation of Mr. Madison himself can commend to the favorable judgment of a disciplined logician of the present day.

"It seems to have been considered, however, that the power of removal was conferred by a sort of necessary implication, because the President is the responsible head to whom all others are subordinate, and bound by his oath for the faithful execution of the law, and that the power was incidental to the duty, and might be requisite for its fulfillment.

"Whether this much-talked of responsibility of the President amounts to anything in practice, or can be held to go beyond an honest endeavor on his part to see that the laws are faithfully executed, so far as he is endowed with the means of enforcing them, is more than can be safely assumed, and more, I think, than any friend of the Executive would care to affirm.

It does not, however, follow, *ex necessitate*, that although there were a failure of duty on the part of the officer, the power of removal would then belong to him either *qua* Executive, or as general residuary legatee or trustee under the Constitution. It is neither essential nor desirable that the officer should be responsible to him, or subject to his will. This would be to turn the faces of the public servants in the direction of the President, just as the fire worshipper salutes the opening glories of the king of day, or the sun-flower is supposed to 'swing the circle' of the horizon in adoration of its God. There is a responsibility to the law, as there is a way of removal indicated by it, which is in nowise dependent on the executive will, that holds the officer to the performance of his duties, and is the only practical security for those who are interested in it. Any other is more imaginary than real, so long as it is enough for the President himself to say that he is irresponsible because he is without power in the premises. He would be equally so in effect with all the power that he claims. He may say that he wants more than the Constitution intended to give him, that it is our interest that he should be gratified, and our necessity that he should be enabled to do our work; and a facile Attorney General, holding his own place by what he regards as the necessary tenure of executive pleasure, will be always found to attribute to him all he covets, upon the convenient plea of an overruling public necessity. He will do this naturally, because he sees no power in the state, except the one under whose shadow he reposes. If he cannot torture the Constitution into a grant of it, he will raise an incidental authority out of a supposed necessity, for the fulfillment of a general duty. The framers of the Constitution supposed that it might require an express grant even to the legislative department, to make such laws as might be necessary and proper for carrying into execution all the powers vested in the Government. But they did not stop here. They looked to legislation only to supply the needs of the other departments, and provided them an auxiliary in Congress to aid them in the execution of their duties. They have done away, therefore, with the necessity of a resort to incidental powers in the Executive. If there is a *casus omissus* in the law it is for Congress to apply the remedy. But it required no constitutional provision for this purpose. Every Government has the inherent, because necessary, power of regulating the tenure and conduct of its own officers, and displacing them at its own will, except where it is expressly forbidden by its fundamental law. If the law is silent or defective it imports no surrender of so important a function, and no lapse to the executive magistrate.

"But what is there at last in the clause that vests the executive power in the President? Nothing more than in the corresponding clauses that vest the legislative power in Congress, and the judicial in the courts. In any sense, it is but a distribution or assignment to each of these departments, of its appropriate share of the powers actually conferred on the Government by the Constitution. To say that this is in the nature of a grant that passes all power that may in any sense be regarded as executive, whether conferred by that instrument or not, is something in the way of construction, that can find no more favor with the statesman than with the lawyer. In an absolute monarchy, where everything depends upon a single will, all powers may be said to be executive, because there is no law but that will, which judges and executes itself. It will hardly be contended that the clause in question was intended to make the will of the Executive so large a part of the administration of this Government.

"Is it true, then, that upon such a case as this, a mere acquiescence, or even a vicious practice of three quarters of a century, is to canonize a doctrine that is so manifestly in conflict with the spirit of our Government, and the very letter of our Constitution? I have asked on another occasion—I now repeat the question—what is a century in the life of a State? What would be thought, moreover, of a constitutional amendment, or a declaratory law, broadly enunciating and establishing the doctrine, that the President may appoint and remove all officers whose tenure is not made by the Constitution dependent on good behavior, of his own unassisted volition, and without regard to the merits or defaults of the objects of his bounty or his displeasure? Would Congress or the people agree to such a proposition? And yet this is precisely what is now claimed for him, and what he is now actually doing, on the hypothesis of a Cabinet minister, that the offices of the Government, as the rightful appanage of the Crown, are his property, and those who fill them were intended to be the mere creatures of his will.

"When it was suggested in the debate of 1789, that this enormous power might be thus abused to the destruction of our liberties, the answer was, that this was impossible, and would constitute a clearly impeachable offense, if done, and upon this point there was apparently no divided sentiment. Since that time, and especially after the lapse of the first forty years, it is not to be denied that the patronage of the Government has more than once been brought in conflict with the freedom, not only of elections, but of opinion. It was reserved for us to hear it publicly and defiantly declared, for the first time in our

history, to be the settled intention of the Executive to use the patronage we gave him—ay, to *foot* the objects of his predecessor's trust, as he 'would spurn a stranger cur, over his threshold'—for the purpose of overruling the judgment of Congress, and bending the whole nation to his will; and the results of the elections in Philadelphia and New York, so happily overruled by the healthful influences of the country, show that it was no idle menace on his part.

"But what avails either the supervisory power of the Senate, or the remedy by impeachment, which was relied on by the Congress of 1789, as against a high delinquent who holds the spoils of a nation in his hands? Has the constitutional brake been put down even where it might have been? And if it were, how is it to help us, when the jurisdiction of the Senate is ousted by the many ingenious devices of tyranny, that have found a ready support in the opinions of the law officers of the Government? May it not be said with truth, and without offense, that the Senate itself has tacitly countenanced, if not approved, removals for opinion's sake—the very offense that would have warranted an impeachment, in the judgment of the Congress of 1789—by confirming nominations made obviously on no other grounds? What, then, are we to hope from the slow and doubtful and, perhaps, obnoxious process of impeachment, where the criminal is a President, and a vote of two thirds is required to convict? If you would impeach successfully, you must strip him of his power over the fortunes of the citizen. No glittering bauble must be allowed to dazzle the vision, or tempt the cupidity or the ambition of either the prosecutor or the judge. No army of stipendiaries must be allowed to surround his person and depend upon his will. Invested with all these imperial prerogatives, and backed by the power of the sword, another President, with more discretion and wiser counselors, may threaten the public peace, and threaten it more successfully, by flinging himself into the arena, with an array more formidable than either the Household Swiss or the incipient Prætorian guard who lately mustered on the royal summons, and disputing with you the mastery of the empire.

"Have not the people been already told by the Executive himself that we were too lavish of our confidence, and that they owed it to his forbearance and humility alone that he had not accepted the crown, and endued himself in the purple that we had offered him? Have they not been asked by his chief adviser whether they would have him for President or King? Reduced to his constitutional nakedness, he is still formidable enough, but not so formidable as to endanger

our liberties. What is he without the use of the unrestricted patronage that he commands? But for that, is it within the range of probability than any Executive would have ventured to insult and defy the loyal people of the nation, by denouncing its high legislative council—the constitutional depository of its will—as a body of usurpers—'traitors on the other end of the line'—in actual rebellion against the South, and proclaiming that it was to his self-denial only that they were indebted for the preservation of their liberties? But for the prestige which it gives him, who would have thought it necessary to inquire whether the President would recognize the next Congress, or submit to the public will, or favor the adoption of the constitutional amendment by the rebel States? If he were indeed the 'humble individual' we have so often heard of, who would send, or who would listen to the daily bulletins announcing royal conferences upon the settlement of the nation, or imperial resolves upon the great questions of war and peace with neighboring States? Without the power to reward his favorites, by putting a gold chain about their necks, and lifting them to the highest places in the kingdom, where was that spoil-engendered and spoil-inspired array—that formidable shape—

"If shape it might be called that shape had none
Distinguishable in member, joint, or limb,
Or substance might be called that shadow seemed"—

'the National Union party?' Who is there, in that case, of all the menials who have re-echoed the classic objurgations with which the representative body of this nation has been assailed, that would have been so poor to do their author reverence? What else than the abject servility that flatters and intoxicates—unless it were the Providence that sent out Pharaoh with *his* captains in the pursuit of the fugitives of Israel—could have inspired the royal progress and the royal speech, and launched its victim on that crusade which ended so unhappily for himself? May I not ask, 'Upon what other meat has this our Cæsar fed that he is grown so great?' Pass this bill, and the bloated and exaggerated power that now 'bestrides this land like a Colossus,' and bids us all 'to hide between its legs and find ourselves dishonorable graves,' will sink down at once into its constitutional and healthful proportions. Pass this bill, and you may dispense with the dead letter of the impeaching power, because no future President will then presume either to depose, or ignore the legislative authority of this nation, or to refuse obedience to the high behests of the people, as expressed through their Representatives. Heed not a vicious precedent, as big with ruin as

the primal fault, the plucking of the fruit 'whose mortal taste brought death into the world.' What though the Fathers may have erred, as did the first? Their fault may be repaired. It is of no consequence to us what the Congress of 1789 may have decided, or what any of their successors may have acquiesced in, if they were wrong, and the life of the nation has been imperiled by their error. The public interests, the safety of the State, the sentiments of the people, all demand some measure of the kind which this bill proposes; and this Congress will fail in its duty, and disappoint the just expectations of its constituents, if it adjourns without providing it. Reject it, and the golden opportunity—the ebb of the tide that has gone back under the earthquake shock of the ballot-box, and now invites you to build up a dike that the returning waters shall never overleap—is gone, perhaps, forever. It is not often that a President comes in with that kind of courage which is required for the betrayal of his party and his country, or the abandonment of the principles and pledges on which he was elected. It has never happened before—and perhaps never will again—that the party so betrayed has been honest enough, to fling the offices of the Government behind it, like the temptation in the wilderness, and strong enough, and courageous enough, to grapple successfully with the hydra it had unwittingly engendered.

"The people are now here in their unclouded power. They have taken the Government into their own hands. They have rebuked and trodden down the arrogant pretensions of the Executive. They have stricken the veto dead in his hands. They have declared that he shall not stand at your doors to arrest your legislation, as he has publicly threatened that he would do. They have degraded him, for the time being, from your associate in council, to the mere minister of your will. It is their high and irreversible decree, that the public servant who presumed to deny *their* jurisdiction and *yours*, over the most momentous question of your history, shall stand aside until you have disposed of it, and then execute your judgment in good faith, whether it be agreeable to him or not. They have now reviewed and reaffirmed their decision of 1864, and again instructed you to enact such laws as you may think proper, and to see that they are honestly enforced, *or that the impediment is removed*. Pass this bill, as the first in the order of necessity, and the residue of the work will be of easy accomplishment. Reject it, and posterity will grieve that the courage which had conquered treason twice was not seconded by the spirit that might have shorn its locks, and bound it in everlasting chains.

"We make history to-day. The classic Muse who looks down from her pedestal on this Chamber, stands ready, with uplifted style, to write the chapter that is to record the doings of this session. It behooves us to see that the judgment of a nation is not made void by the faint heartedness of its Representatives. There is no time now for dalliance with the power that we have conquered. No gentle speech, 'no candy courtesies,' no dull oblivion of the pregnant past, befits the crisis that is on us now. We have just trodden the winepress of Revolution, to encounter at its closing doors the bloodier form of Anarchy, while the untamed fiends of the rebellion, their appetites inflamed and their hands dripping with the blood of the martyrs, laughed—as none but the damned could laugh—at the rising vision, but dimly foreshadowed by the St. Bartholomews of Memphis and New Orleans, of the opening of another seal, which should turn our rivers into blood, and visit upon us and our children more than apocalyptic woes.

"Over that precipice of ruin this nation has hung trembling for the last few months. The virtue and intelligence of a free people, inspired and directed by the providence of God, have bridged the fathomless abyss that yawned before us, and saved us from the horrors of this second death. We can now look back and measure the danger, and detect its source. We know its cause. *Executive usurpation—despotic will*—encouraged and re-enforced by the unlimited command of all the offices of the Republic, and all the corrupting influences which they can employ, is written in flaming characters upon every rock that has threatened us with shipwreck. This giant power must be abridged if our peace is to be maintained, and our liberties made sure. The time is now to put a hook in the jaws of this leviathan that has tempested the waters, and moor him to his proper place under the Constitution. If we fail, the evil will go on swelling in volume, and accumulating a resistless momentum as it flows, until the one-man power—become all in all—enthroned in solitary state, like some volcanic peak, shall tower aloft, uncontrollable and supreme, over a nation of slaves."

The Tenure-of-Office Act was passed over the veto of the President, who regarded it as unconstitutional, and likewise the Reconstruction Act became a law on March 2, 1867, thus operating a complete system of reconstruction through the Secretary of War, Mr. Stanton. While this latter act would, if the Southern white people had responded to it, have given them a chance to exercise their natural influence as citizens, it was well known

that they would not, and it did practically operate to disfranchise them.¹ These measures were undoubtedly the expression of the will of the majority of those then voting in the United States, and that will was due chiefly to suspicion of the Tennessean President's sympathizers and the course of the Southern white population under Johnson's "restoration" policy. That it was also due to what is now generally accepted as the unwise policy of universal suffrage where there was such a mass of ignorance controlled by the dominant element, cannot be doubted; at least it cannot be by those far enough away from personal experience in those trying times to view it historically. On the other hand, is it not an error to suppose this great convulsion of '61-65 closed with its mere physical end? Was it possible that the industrial, political, social and mental phases of so great a convulsion should not continue wrecking with their great billows long after the storm proper had subsided? Indeed, is not that part of the storm often the worst in its effects—and naturally so—because the waves are still dealing blows upon the exhausted, after a vision of peace has appeared? There are always pain and increased wreckage in the reconstruction of a wreck, and is it not assuming on an entirely unhistorical scale to say that the so-called "restoration" policy of even President Lincoln—so far as it could be known what it would be when the actual operation began—could have, while securing the final settlement of contested questions for which the war was fought, been operated with less pain to all concerned? Pain and time are both concomitants of the healing of a wound or a disease, and it is not an uncommon experience in life that the pain and time both should be charged to the physician and nurse who happened to be called to the unpleasant duty. The time will come, if it is not already here, when this period of reconstruction will be looked upon as the most critical period of this civil upheaval, as the years

¹ *Congressional Globe*, Thirty-ninth Congress, 2d Session, Part 1, p. 22.

Any one who wishes to see a legislative phenomenon, full of startling suggestion, has but to see a volume of the reports of the State Executive or minutes of a Legislature under these reconstruction acts, *e. g.*, those of Mississippi, when the members of the latter body were almost entirely colored.

following 1781 have long been considered in our first one, and when the Thirty-ninth Congress passed out of existence on March 2, 1867, there is no manner of doubt that it was so considered by Mr. Williams.

CHAPTER XVIII

THE FORTIETH CONGRESS

A LEADER OF THE JUDICIARY COMMITTEE, HE WRITES
THE IMPEACHMENT REPORT AGAINST PRESIDENT
JOHNSON AND MAKES THE GREAT FINAL ARGU-
MENT AS ONE OF THE BOARD OF MANAGERS

1867

The Fortieth Congress assembled immediately on Monday following the close of the late Congress on Saturday. Mr. Williams drew the seat immediately back of his former one; Garfield was in the fourth seat to his right; Blaine two seats farther west; Allison in front of Garfield; General Logan was a seat or so across the aisle, and General Butler in front of Allison, with Kelley at Butler's right and Stevens in front of Kelley; Wilson sat at Butler's left and Boutwell was two aisles farther west.¹ Colfax was still Speaker. On the 7th of March the judiciary committee was announced. Chairman James F. Wilson of Iowa, George S. Boutwell of Massachusetts, Francis Thomas of Maryland, Mr. Williams, Frederick E. Woodbridge of Vermont, William Lawrence of Ohio, John C. Churchill of New York, Samuel S. Marshall of Illinois and Charles A. Eldridge of Wisconsin. In the previous January (7th) an investigation of the President had been ordered and the judiciary committee of the late Congress had been unable to complete the work. It was now ordered to take it up again and continue its investigations during a recess which lasted from March 30th to July 3d (1867).² On July 10th the matter

¹ Plan of the House, facing p. 9, in *Congressional Globe*, Fortieth Congress, 1st Session.

² In a letter of March 9, 1867, Mr. Williams tells his wife of an invitation to dine with the President which he "most respectfully declined." He added that he "did not care about sitting down at the table of any man for whom I

came up and Chairman Wilson intimated, in reporting, that the committee were still not ready, that they were now five to four against the existence of grounds for impeachment, but Mr. Williams promptly spoke for the minority, stating that he and his three colleagues on the committee were satisfied to report now in favor of the existence of grounds for impeachment.¹ Boutwell was of the minority, too. It was the course of the President since the passage of the Tenure-of-Office Act, of which law Mr. Williams was the author, that converted him to impeachment.² He expected the President to continue his warfare, and had already endeavored to make still further secure all the aims of Congress by the introduction, both at the last Congress and the first session of the present one, of a bill to require a full bench of the Supreme Court and a unanimous opinion on the constitutionality of congressional measures, but as his main defense of it came up later, it need not be anticipated.³ He was drawn into an expression of his relation to investigation and impeachment, however, on July 20th (1867), in a parliamentary skirmish between the majority and minority of the judiciary committee, under the form of "personal explanation." He said, "the place which has been assigned me in this investigation was not one of my seeking. The duty which it involved has been to me a very painful one—it has been a very laborious one. * * * I have had no end in view but to serve my country, in a case where I thought its highest and dearest interests, its safety, and its life were involved." He said a gentleman had stated "that it was a mere question of President-making."⁴ "Allow me to say in reply," Mr. Williams continued, "that my humble ambition has never tended in the direction of

have no personal respect who has betrayed the friends that have been so confiding & generous & taken to his bosom the worst & vilest of our country's enemies."

¹ *Congressional Globe*, Fortieth Congress, 1st Session, pp. 3667.

² Dewitt, in his "Impeachment and Trial of Andrew Johnson" (p. 322), treats Williams as the representative voice for the Tenure of Office Bill, and (p. 293) notes that he, Schenck and Wilson were the committee to enter on it with a similar Senate committee, composed of Senators Williams (of Oregon), Sherman and Buckalew.

³ *Congressional Globe*, Fortieth Congress, 1st Session, p. 59.

⁴ He referred to the desire of some who, by impeaching President Johnson, would put Senator Wade of Ohio, residing officer of the Senate, in the White House and make him the logical candidate for the next term.

either making presidents or kings," and after intimating that there was no honor in making either, he added "when I find a President of these United States asserting kingly powers, claiming the force of statutes for his proclamations, living in habitual contempt and violation of your laws, suspending their powers or trampling them under foot, bartering away untold millions of your property for rebel use, claiming to rule without a Congress, insulting the legislative power and defying its authority, and ruling this nation as if he were its master, so help me God I will uncrown him if I can."

The investigation was continued, and while it was still in progress—although Congress itself had adjourned July 20th to November 21st—on August 5th (1867), the President suggested the resignation of Secretary Stanton, and Stanton refused, at least before the next meeting of Congress. On the 12th he was suspended by the President and General Grant placed in charge temporarily. This was known, of course, on November 25th, when Mr. Boutwell presented the judiciary committee's majority report, recommending impeachment, adding "that all that part of the report which relates to the testimony taken, and to the consideration of the law involved in the case, was prepared by the gentleman from Pennsylvania [Mr. Williams], a member of the Committee. It has fallen to my lot to present the report to the House, for the reason that it was the pleasure of the Speaker to place me second upon the Committee on the Judiciary; and the Chairman of the Committee [Mr. Wilson of Iowa], dissenting from the report of the majority, it was, by general consent of the members forming the majority, agreed that I should present the report to the House."¹ It was ordered printed. The majority which signed it were Boutwell, Thomas, Williams, Lawrence and Churchill. It covered over fifty-eight pages of printed matter, all of which was the work of Mr. Williams except less than four pages of summary by Mr. Boutwell.²

To quote only one paragraph from this report: "It will be observed, then," he adds, after his introduction,

¹ *Congressional Globe*, Fortieth Congress, 1st Session, p. 791.

² See Boutwell's "Reminiscences," Vol. II, p. 113.

"that the great salient point of accusation, standing out in the foreground, and challenging the attention of the country, is *usurpation of power*, which involves, of course, a violation of law. And here it may be remarked that perhaps every great abuse, every flagrant departure from the well-settled principles of the government, which has been brought home to its present administration, whether discovering itself in special infractions of its statutes, or in the profligate use of the high powers conferred by the Constitution on the President, or revealing itself more manifestly in the systematic attempt to seize upon its sovereignty, and disparage and supersede the great council to which that sovereignty has been intrusted, is referable to the one great overshadowing purpose of reconstructing the shattered governments of the rebel States in accordance with his own will, in the interests of the great criminals who carried them into rebellion, and in such a way as to deprive the people of the loyal States of all chances of indemnity for the past or security for the future, by pardoning their offenses, restoring their lands, and hurrying them back—their hearts unrepentant, and their hands yet red with the blood of our people—into a condition where they could once more embarrass and defy, if not absolutely rule the government which they had vainly endeavored to destroy. It is around this point, and as auxiliary to this great central idea, that all the special acts of mal-administration we have witnessed, will be found to gravitate and revolve, and it is to this point, therefore, as the great master-key which unlocks and interprets all of them, that the attention of the House will be first directed."

The report states that from Mr. Lincoln's well-known and "habitual deference to the public will," there was no doubt, even he, who was from a loyal State, would have lain down his sword before the Congress after the surrender, and let Law resume her sway; that it would be an easy task to show that congressional action would have been and had already been of a moderation, forbearance, and magnanimity "that has no example in history;" but at any rate the committee were of one voice in that the task left by the war was no business of the Executive.

"Never," reads one sentence, "in the history of this or any other State have questions more numerous and vital, more delicate or difficult, requiring graver deliberation, or involving the exercise of higher governmental powers, presented themselves for the consideration of a people; and never was a Congress convoked in a more serious crisis of a State." Nothing further of the report need be anticipated, as the parts emphasized by Mr. Williams when the impeachment, which was finally recommended, came to trial will be seen in full.

On December 7th (1867), by a test vote for impeachment, the recommendation was rejected by 108 to 57, but events soon modified this. The Senate, in executive session, on January 13, 1868, carrying out the spirit of the Tenure-of-Office Act, refused to consent to Mr. Stanton's removal.¹ On the same day Mr. Williams brought forward his previous bill, in the form of an amendment to the Senate bill, providing for a full bench of the Supreme Court and unanimity of decision on great constitutional measures of Congress, and he made a short defense of it of such significance—especially in its closing paragraphs, that it is quoted entire as giving his vital relations to this whole contest with the President, in what may be called the "Second Civil War of the Sixties." Nowhere else does he describe his attitude to public questions more accurately than in this short address:²

The object of the amendment reported by the committee to the Senate bill is to preserve this Government in its original spirit, and protect its people in the enjoyment of the rights intended to be secured to them by its fundamental law, by protecting that law as well against the encroachments of the States as from the ambition or infirmities of its accredited expounders, acting through the more insidious and alarming process of judicial construction, which is so often but another name for judicial legislation.

The purpose of the amendment just offered by me, which is

¹ McPherson's "Political Manual of Reconstruction," p. 262 (1875). A collection of miscellany, a squib apparently taken from the *National Intelligencer*. It is not in the *Globe*, of course.

² *Congressional Globe*, 2d Session, Fortieth Congress, p. 479, and appendix, p. 85. Mr. Marshall referred to Mr. Williams as "The distinguished gentleman from Pennsylvania, a member of the Judiciary Committee, the gentleman who first brought this question before the country."

no other than a copy of the bill that, under a feeling of profound alarm for the tranquility of the nation and the preservation of the just balances of the Constitution, was introduced by me into the last Congress, and again renewed and referred upon the inauguration of the present one, is to make that protection sure by exacting the highest security that the authority of Congress can demand and the nature of the circumstances will admit.

To this end it provides that not less than a full bench shall sit in judgment upon the will of the people as declared through their Representatives, and that nothing short of the consentaneous agreement of the favored few, holding their places by appointment of the Executive, shall nullify that will, by breaking the scepter of the law-giver, and striking his ordinances dead at his feet.

The amendment of the committee, while it accepts and incorporates the principle enunciated in my bill, and so far challenges my approval, reduces the security provided for it by compromising on a two-third vote, which, under the present constitution of the Supreme Court, would add one voice only to the number now required to undo the work of Congress, and give, perhaps, a new law to the people; and in this, I think, falls short of the necessities of the case and the high requirements of public duty.

The difference, then, is only one of measure or degree—a mere question of more or less—between the highest possible security and an inferior or lower one. And here, I think, it may be affirmed with confidence that the legislator, holding, as he does, a public trust, and not dealing upon his own account or for his own private interests alone, has no absolute discretion, no choice, indeed, but to take the higher and superior. Assuming the need of a guarantee for the public safety, he cannot, in my judgment, demand too much; his only question is what is within the range of the possible. When the great interests—perhaps the life—of a nation are involved, I take it to be his clear duty to waive no security, but to

“Make assurance doubly sure,
And take a bond of fate.”

The point once admitted, as it is here, that we may require any more than a majority, the whole question is surrendered. If we may exact two thirds it is transparent that we may exact the whole. And who shall say, if we may do this, that the lowest security which the country shall enjoy shall be less than the

unanimity of the jury box? If that is practicable, why not insist upon it.

To these questions there can be no answer except that it is unreasonable, or inexpedient and unnecessary. But is this so? Let us examine.

It is not certainly unreasonable to insist that if the judgments of perhaps two hundred representative men, of the *clite* of the nation, drawn mainly from the legal profession, and embodying a large portion of its wisdom and experience, are to be overruled by a little conclave of some seven or eight not chosen by the people at all, and no wiser or better than themselves, the oracle whose nod is claimed to be equal to the stamp of fate shall give out no discordant utterances. The wisdom of that common law which was claimed by our ancestors as their birth-right has ordained that the life, and liberty, and property, even of the humblest citizen, shall not be taken away without the unanimous verdict of a jury of his peers. Who shall say that the life of a great State, the liberties of a great people, are not entitled to the same protection, and that four or five men out of a body so constituted—nay, even a bare majority of those four or five—shall determine in the last resort, and without any appeal whatever, the extent of its own charter of freedom, in defiance of the sense of the millions who, under all the forms of the Constitution, have declared their sovereign will?

I did not regard it as unlikely that the proposition, which I had the honor to introduce nearly a year ago, would startle the profession at first sight as an alarming innovation, and I am not sure that this expectation has been entirely disappointed. It could scarcely in the nature of things be otherwise. Lawyers, who run in grooves, and are educated into a superstitious reverence for precedents, and so often—I may say so proverbially—fail as statesmen, because they lack the bold, original, and progressive spirit of a Mansfield, are always averse to untried ways, and always ready to denounce the idea of reform or change, whenever it goes to matter of substance and beyond any mere question of form, as a pernicious novelty. Men of this sort will say, perhaps, that there is no case where unanimity of sentiment has ever been demanded at the hands of any tribunal on a question as to the meaning or effect of a covenant or a law, and taking their position there, maintain that the thing is improper only because there is no precedent to warrant it.

And yet if the law, as claimed by its professors, is only reason and the very perfection of it, and if what is not reason is not law, it will be found, on the application of this test, that there is nothing in the requirement of unanimity to conflict with

that idea. Whatever weight considerations of mere convenience may be entitled to in ordinary cases upon questions of merely private right between man and man, it cannot certainly be affirmed that there is anything unreasonable in the proposition that unanimity of opinion shall be required where the tribunal is a small one, and it is sought to overthrow the judgment of the millions, speaking through another and greater organ, on a matter that concerns the well-being of the whole, and perhaps the very existence of the State. The lawyer who cherishes the old and favorite hypothesis, that what we every day realize to be the most uncertain of all things is always absolutely certain, cannot very consistently complain that the meagre priesthood, which ministers at the shrine of an oracle that claims to be infallible, should be expected to give out no divided responses, and scatter no ambiguous voices among the worshippers, but, on the contrary, on all vital questions at least, should blend all its outgivings into one sublime chorus of universal harmony. In matters of faith, where the idea of infallibility is the rule, such consentaneity is indispensable. If the successors of the fisherman, along with the triple crown had worn a triple head, the prestige of infallibility must soon have disappeared. With seven or eight heads the faith must necessarily have perished under any other other rule than that which is proposed to be enacted here.

It is only necessary to remind the lawyer himself that there is an analogy to this in that time-honored institution, the trial by jury, which, although generally referred to the great charter of English liberty, antedates the records of our race, and is imbedded in all our constitutions as the palladium of all our rights—the one great pre-eminent defense of private and public liberty. It was not enough that the person and property of the citizen should be walled round by the protection of his peers. Even that security was treated as inadequate without the unanimity that constitutes its excellence. It was still possible that seven men out of twelve might be warped by prejudice, misled by ignorance, imposed on by cunning, corrupted by money, or seduced or overawed by power. The life and liberty and property of the citizen were not to be trusted to the keeping of the majority, or taken away except by the unanimous accord of all his judges, passing in criminal cases as well upon the law as upon the facts. It is the glory of England, as it is the boast of America, that not one of the great natural rights, whose protection is the only legitimate object of all government, shall be disturbed, even in the smallest particular, without the unanimous judgment of a larger bench than that which claims to pass, by a

divided vote, upon the fundamental law of a great nation, and in effect to nullify that law, or to make it speak in accordance with its own imperial behests. Who, then, shall say that there is in this amendment anything unreasonable or unprecedented, or any departure from the analogies of our Constitution; or that a nation may not borrow in its extremity, for the preservation of its life, the securities it has already thrown around the humblest individual and the lowliest home?

If there is anything that is transcendently and indefensibly unreasonable, it is in the idea that it should be competent for even any seven or eight men, however exalted, and with like passions and infirmities as ourselves, either to legislate away by construction the great charter of our liberties, or to set aside the decrees of the high council of the nation, embodying, as it always does, a large share of the intelligence and all of the majesty of a great people, and in effect to bind everybody but itself. That is an anomaly necessary, necessitated, perhaps, by the fact of a written Constitution, but still an anomaly that may well startle us, in view of the possibilities that are so strongly suggested by the present condition of the nation, wherein its highest judicial tribunal is invoked and depended upon, as a powerful, nay, a resistless auxiliary in the war waged by the Executive against the power that is entrusted under the Constitution with the making of its laws. There was a time when it was seriously doubted whether there was any authority in the States or the United States that could declare an act of the law-making power to be invalid because it conflicted with the constitutions of either. That question has been settled affirmatively on grounds that may be, perhaps, conceded to be unanswerable, and which I will not, at all events, attempt to controvert. It was apparently the logical and necessary result of an antagonism between a superior law and an inferior one, which could not be reconciled without the surrender of one or other of them. If the fundamental, and of course the higher law was not to prevail in such a strife, the Constitution became valueless as a limitation, which it was intended to be. It was not without reason, however, as we have occasion from very recent experience to know, that the jealous and watchful and sagacious Jefferson referred again and again to the power claimed for that tribunal, as involving the establishment of a judicial oligarchy in the land.

We look in vain to the country from which our institutions are derived for any example of such a power as this over its constitution and laws. The royal negative, it is true, may suspend the action of the legislative body, although in point of fact

that prerogative has slept for nearly two hundred years, but it settles nothing in regard to the powers of that arm of the Government, and only stays its operation until the might of public opinion comes back to bend even royalty itself before it. No British court, even the most ancient and venerable, with all its historic prestige and all its array of learning, has ever ventured to set limits to the authority of the law-giver. The appeal is not there from Parliament to the courts, but practically from the courts themselves to Parliament, as the highest of them all. And well and faithfully has that great depository of the unwritten laws and customs of England, which constitute the safeguard of the liberties of its people, observed and performed that responsible and exalted trust. In the custody of the courts they would have sickened and died under the withering influence of royal favor. The history of that nation proves abundantly that in all the struggles between prerogative and privilege the supplest instruments of tyranny have been the judges. But to the honor of the Legislature be it said, that no decision has ever been made by them which violated the instincts of the Saxon race, by breaking down its landmarks, or traversing its great maxims of liberty, by impinging upon the natural rights of the subject, that has not been eventually reversed by the Commons of England in Parliament assembled. And thus, without a written constitution, with no guides but those high instincts, those hoary and venerable customs, and those hallowed traditions of the past, which, handed down, as they have been, from sire to son from prehistoric times, make up the body of their common or customary law, the liberties of Englishmen, so wisely reserved for their own keeping, have been perpetuated from generation to generation, not only unimpaired, but enlarged, improved, developed, and strengthened by the flow of centuries. They have not learned the royal lesson of the last presidential campaign, which is still rehearsed and reiterated even here, that the danger of tyranny is from the many, or, in other words, from themselves, and that they required the vetoes of a king, or the supervisory power of a court, to instruct them as to their rights, and protect them from themselves. There have been none among their representatives so deficient in self-respect as to abase themselves in the presence of any court; none so unappreciative of their own high trusts, or so forgetful of their official dignity, as to insist, or even to concede, that there was more wisdom and learning, and virtue concentrated in any body of seven, or eight, or even twelve men in Westminster Hall, selected by the Crown, than was to be found in the multitude of counselors that represent the people of a great empire. The Parliament of England

is the guardian of the liberties of England, and cannot betray those liberties without surrendering its own. And so, too, with our Constitution and all of value that it contains. When it ceases to be safe in the hands of all the people, who have a common inheritance in its provisions, it is idle to hope that it can be locked up securely under the custody of any seven or eight men outside, as so many doctors of the Sanhedrim, with the high prerogative of reading and interpreting it to the people, as the imperfect judgment or the mere caprice of a majority of them may determine. The statesman who holds that we cannot safely trust ourselves, and that our only security is in such a guardianship, surrenders the idea of self-government as a visionary and impracticable thing, and confesses that a political State cannot exist without a master. That is an ancient superstition. Wise men of old and some of modern times have entertained it. The world has generally been governed under it, often by a hierarchy. It was supposed for a long time to have been exploded here. It is now revived under the auspices of the Democratic party—once so hostile to this *regime*—in the idea that a sort of hieratic college—a priesthood of a new religion—a little oligarchy of lawyers—is the only safe depository of the supreme power of the State. The difference is only between an octarchy and a monarchy—between eight sacerdotal masters—a sort of conclave of superannuated cardinals—in wigs and gowns, and a single royal one in purple. Without disparagement to either of these high professions, and certainly with none to that to which nearly forty years of my own life have been devoted, and which is now sought by some to be enthroned at this Capitol as the absolute master of the State, I must be excused for thinking that, however flattering may be the offer of the crown to us, many people would, perhaps, prefer the purple, with all its attendant splendors, to the sable regalia of either the priest or the pedagogue.

If it has been found, however, that the liberties of Englishmen could not be safely trusted to their courts, how much less likely is it that ours, as a people, can be confided securely to the same hands here. It may be truly said of the judiciary of the mother-land, that since the era of the great Revolution, for a period now of near two hundred years, there have been no tribunals among men that have been more exempt from the frailties of humanity, and have more nearly approximated to the ideal of unerring wisdom and perfect justice; and it is to the fact that the highest honors of the profession are only accessible to the highest excellence, that there are no loftier rewards to tempt ambition, even the most restless and insatiable, and that

there is a homogeneity among its people which frees it from the adulteration of foreign and inferior ethnic elements, that it is indebted for these exalted qualities. No favoritism rules in the selection of its judges. The leader in the forum steps by an admitted right of succession into the first vacancy on the bench. It is scarcely within the power of the Crown itself to disregard this rule in its appointments. To pass by the trained athletes, and single out even the greatest of the parliamentary leaders for such a place, would shock the moral sense of the whole realm. Not so, unfortunately, with us.

There is, perhaps, scarce a Congressman or Cabinet officer, who has been long enough in public life to unlearn all of law that he ever knew, whose modesty would prevent him from seeking or accepting the mantle that has fallen from the shoulders of a Marshall or a Story. It is not to the leaders of the bar in this country that the honors of the profession are awarded, as their undisputed right; and they are, perhaps, not sought by them, for the reason that the rewards are not commensurate with the earnings of the higher class of professional men. And therefore it is that the bar is in most cases superior to the bench, as it cannot be where the usage prevails of selecting the judges from the ablest of its members; and therefore it is, too, that the spectacle of a divided court is, of late years especially, so common a thing, that unanimity is the exception rather than the rule, and lawyers themselves are startled at the idea of prescribing a condition that to them seems impossible. I take leave to say that it is no more impossible than the harmonious agreement of a jury. It is questions of fact alone that are the most fruitful sources of difference among men. In matters of pure science, as the law is sometimes claimed to be, there is no great room for controversy. High culture and thorough discipline will go far to secure accordance in opinion. The best lawyers will be seldom found to differ where they are agreed upon the facts. It is only the pretenders, the mere sciolists, that convert what ought to be the temple of concord into an arena of perpetual strife, on the bench as well as at the bar. In the long term of thirty-two years, during which Lord Mansfield presided over the Court of King's Bench, there were, if my recollection serves me right, but two cases of division among the judges of that court—one the case of *Millar* *vs.* Taylor, upon the great question of literary property, and the other that of *Perrin* *vs.* Blake, upon the application of the rule in *Shelley's* case—and no reversals in the Exchequer Chamber or in the House of Lords, except in those two cases, wherein the dissenting judge was Yates, who was decided to be right in

both. Another Yates might save the Constitution here against even the errors of another Mansfield by the adoption of the proposed amendment. And what is there, in view of this striking chapter of judicial history, which is only singled out by way of illustration of the general harmony that prevails in England, to prevent the achievement of the same result with us; and who is there that will consent, until it is accomplished, to trust the welfare and the very existence of this nation to such an arbitrament.

But it is not the want of professional training only that makes the difficulty and the danger here. The judge, with us, is not so much a lawyer as a politician. The chances are that his politics and not his knowledge of the law, have made him what he is; and the place he has sought and won is, perhaps, but the stepping-stone to a higher one—which he covets more—whenever he shall have recommended himself sufficiently by his conduct there, either to the President or to the party to which he owes his exaltation. Without any of the *esprit du corps*, the devotion to his proper calling, the high professional pride that always results from high professional training, he sinks the lawyer in the politician, and carries into the temple of Themis, where no divided worship is admissible, all the prejudice of party, and all the spirit of the local and sectional demagogue. It is idle to talk of our courts of justice as merely judicial institutions. Disclaiming ostensibly all jurisdiction over political questions, they are as thoroughly political in their texture and spirit as the two Houses of Congress themselves, over whose atmosphere of mists and storms they are supposed to float, like disembodied spirits, in the celestial light of an unclouded and unbiased reason. Turn to the history of our jurisprudence, State and national, and what do you see but the reflection of the opinions of the party which happens for the time being to have the ascendant in the courts? Fortunately, perhaps, for the welfare of this nation, before it was well hardened into the consistency of an organized State, the plastic hand of the party that favored the covenant of Union was invoked to put its impress on the work and launch it on its high career. If the old Federalist, however, carried to the bench one set of opinions, the old Republican brought with him another. With the growth of slavery the State rights Democrat, drawing his inspiration mainly from that unhallowed institution, took possession of the State and Federal courts, stealing away, even in the free Commonwealth of Pennsylvania, the chartered rights of the black man, under the miserable juggle that the word "freeman" did not mean a free man, but a white man, and maintaining its

power here and in the States until that power culminated and carried the country down into rebellion and ruin, in the monstrous paradox that slavery and not freedom was the law of this Republic, and that four millions of its native inhabitants were but aliens and outlaws, with no rights that a white man was bound to respect.

When the echo of these opinions came back in the roll of the war drum, and the thunders of the artillery that shook this Capitol, the Supreme Court of the United States, startled, as it no doubt was, by the unexpected results of its own work, with one defection only, maintained its faith to the Union by adhering to the Government, affirming its powers of self-conservation; and recognizing the belligerent relations created by the war. It could not well have been otherwise. Its dignity, its power, its very existence, were involved in the preservation of that Union whose integrity was menaced by the revolt. Not so, however, with the party judges of the States. While it was no longer safe to question the power to coerce, wherever a Democratic judge was found, he was almost sure to cast his vote into the southern scale by a denial of the means, while the Republican judges of the loyal States were ever ready to enforce the legislation of the governments, both Federal and State, in aid of the war. Thus in Pennsylvania, when it was proposed to arm the soldier with suffrage in the field, in order to enable him to protect himself from "a fire in the rear," the constitutionality of the law enacted for that purpose was denied by a Democratic court. If the right of the General Government to compel the military service of its citizens in its darkest hour was sustained even upon the anomalous and extraordinary proceeding of a bill in equity to enjoin the draft, hurried to an argument against all rule before a full bench, in midsummer and out of term, while the rebel armies were thundering at our very gates, and pressing in serried columns upon the fatal field of Gettysburg, by the Supreme Court of the same State, it was only through a popular election which deposed one Democratic judge, and the defection of another, who preferred his country to his party. If the legal-tender act, which provided in the nation's extremity the sinews of war, and fed and clothed the gallant volunteers who so freely offered their young lives to the sacred cause of liberty, was saved from judicial condemnation in the same court, it was in the same way. And now it may be added, since the danger has apparently passed away, and the judges of the Supreme Court of the United States, lately united and cemented together under a feeling of common danger, have come to feel that the Federal judiciary is saved along with the

Union on which it depends, they are found to divide again according to their original political connections and proclivities, upon the validity of the test-oath, the military commissions, and perhaps others of the important measures of self-preservation and defense that contributed so largely to carry us successfully through the war, while it is not to be denied, that if the authority of Congress is not absolutely menaced at this very moment from the same direction, this body at least, if not the whole country, is affected with the deepest alarm by rumors of a combination between the Executive and the courts for the overthrow of the legislative power.

Allow me to remark, however, that in what I have just said in relation to the decisions of the courts I have not intended to inquire who of the judges involved were right and who were wrong, because it is not necessary to the argument, and gentlemen on the other side, to whom it is equally addressed, might differ with me as to that. The object I have in view just here is only to make good the allegation that the decisions of the courts, on constitutional questions especially, are almost invariably governed by the party affiliations of the members, and therefore not so much the judgments of lawyers as of politicians. If the fact be so, it is, of course, and must forever be, in the mutations of party and with the ever-changing kaleidoscope of politics, entirely fatal to the idea of uniformity of decision, and nothing is ever to be settled, as nothing apparently has been settled incontrovertibly heretofore. Assuming it to be true, moreover, there is an end of all argument in support of the judgment of a divided court, if there is not an end of all apology for treating even its unanimous decisions on questions of constitutional law as conclusive upon Congress and the people when they are not even conclusive upon themselves.

It was a grave error, therefore, as I honestly think, on the part of the founders of this Republic, when they departed from the example of our British ancestors in giving place to such an anomaly, instead of reserving the ultimate judgment in all such cases to their own Representatives, or at least preserving their control over the judiciary, by the method of address by two-thirds of both Houses, which was provided in the statute of 9 William III. and has been copied by some of the State constitutions, instead of relying only on the inadequate remedy of impeachment, which corrects no error, however vital, and leaves the defaulting judge to shelter himself under the plea that he erred from ignorance only, or without corrupt intent. To meet this difficulty, however, I have had the honor to submit a constitutional amendment to the same effect, in order to main-

tain the just authority of the law-making power, by bringing the Federal judiciary within the reasonable control of Congress, with such qualifications as will guard it sufficiently against abuse, which I propose to bring to the notice of the House at some more favorable opportunity.

Assuming, however, that the power of review is properly lodged with the Supreme Court, the question is whether the limitation proposed would be a proper one. That it is so is, I think, demonstrable from well settled principles, and as a logical result of the decisions of the court itself.

It is admitted on all hands that questions of this sort are of great delicacy, and ought not to be even heard, except in the presence of a full bench. This is the rule in Pennsylvania, and perhaps everywhere else, and the practice of the Supreme Court of the United States is shown by the Reports to be made in strict accordance with it. (6 Wheaton.) There can be no possible objection, therefore, to so much of the bill as merely imparts the sanction of law to what is already recognized as a rule of the court.

But the rulings of the courts do not stop short with the concession of the principle, that cases of this nature ought not to be heard except before a full bench. It is still further admitted, as well by the Supreme Court of the United States as by the judicial tribunals of all the States, so far as I am acquainted with them, that no act of the law-making power ought to be declared invalid on the ground of conflict with the Constitution, except in a very clear case. (Fletcher *v.* Peck, 6 Cranch, 128; *Resp. v.* Duquet, 3 Yates, 493; *Eakin v.* Rob, 12 S & R.) In the first named case Judge Marshall says, in delivering the opinion of the court:

“The question whether a law be void for its repugnancy to the Constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. It is not on slight implication or vague conjecture that the Legislature is to be presumed to have transcended its powers and its acts to be considered void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.”

And this is reason. When we look to the fact that every law enacted by the Congress of the United States must pass the ordeal of a bench of judges in the Judiciary Committee of each House; undergo public discussion and scrutiny on the floors of both; be affirmed by the votes of at least one hundred and twenty men, comprising among them a large number of

lawyers of great experience and ability, and many of them at least the peers of the judges of the Supreme Court themselves, and then either approved by the President, or reviewed and reaffirmed upon objections made by a two-third vote, it would have been surprising, indeed, if the court could have held any other language in regard to it. When they say, however, that the case must be a clear one, they affirm by an inevitable logic the principle of my amendment. No case can be said to be a clear one where even one out of eight judges dissents, as no decision is regarded as an unimpeachable authority, even in an ordinary case, where there has been a division on the bench; and none *a fortiori* ought to be considered in a case of that sort as of any weight or value whatever. It may be that the dissenting judge is, as in the case of Yates, the ablest lawyer of the number, and therefore it is no unusual thing to find, as in that of Curtis in the Dred Scott case, that the dissenting opinion is the more thoroughly considered and satisfactory of the two. It is not mere brute numbers that ought to prevail in the forum of reason, or in other words, of law, which is supposed to be the perfection of it. The vulgar idea of a majority in numbers, which is only properly admissible on grounds of convenience if not necessity, because in the case of conflicting wills it is impossible that both can prevail, (1 Tucker's Black Commentaries, Appendix, 168-172; 9 Dan Abridgt 37-43 1 Story's Commentaries, section 330) has no proper place in the comparison of opinions, which are not to be tested, as Tacitus, I think, expresses it in regard to the great councils of the Germanic tribes, by numeration, but by weight. It follows, however, from the theory of the court itself, that the law, which is but the voice of the people speaking through their Representatives, is entitled to the benefit of every doubt, and ought not to be pronounced unconstitutional where there is any dissent whatever; and so they must decide if they would be consistent with themselves. The effect of this amendment therefore is only to hold them to the logical consequences of a doctrine which has been distinctly, emphatically, and repeatedly enunciated by themselves.

We are so much accustomed in this country to the idea of a majority, as the fundamental one on which all republican government must practically rest, that we are apt to suppose that it has its own foundation in the very nature of things, and that every departure from it must do violence to the spirit of our institutions. Allow me to say that this is a great mistake. The idea is exclusively a social and political one. There is no such thing in nature as the right of superior numbers to govern the

inferior. Mr. Burke, whose richly furnished, comprehensive, and philosophic mind was brought by the leading events of his time to the exploration and analysis of the great principles that lie at the foundation of all government, holds this language in his "appeal from the new to the old Whigs:"

"We are so little affected by things which are habitual that we consider this idea of a majority as if it were a law of our original nature: but such constructive whole, residing in a part only, is one of the most violent fictions of positive law that has ever been or can be made on the principles of artificial incorporation. Out of civil society nature knows nothing of it: nor are men, even when arranged according to civil order, otherwise than by a very long training, brought at all to submit to it."

* * * * *

"This mode of decision where wills may be so nearly equal, where according to circumstances the smaller number may be the stronger force, and where apparent reason may be all on one side, and on the other little else than impetuous appetite; all this must be the result of a very special convention, confirmed afterward by long habits of obedience, by a sort of discipline in society, and by a strong hand vested with stationary, permanent power to enforce this sort of constructive general will. What organ is it that shall declare the corporate mind is so much a matter of positive arrangement that several States, for the validity of several of their acts, have required a proportion of voices much greater than that of a mere majority. Those proportions are so entirely governed by convention that in some cases the minority decides. The laws, in many countries, to condemn require more than a mere majority; less than an equal number to acquit. In our judicial trials we require unanimity either to condemn or absolve. In some incorporations one man speaks for the whole; in others a few. Until the other day in the constitution of Poland unanimity was required to give validity to any act of their great national council or diet. This approaches much more nearly to rude nature than the institutions of any other country. Such, indeed, every commonwealth must be without a positive law to recognize in a certain number the will of the entire body."

Now, a reference to the structure of our own political machine will show, that while the majority principle, which is but the common law, is generally recognized in public affairs as the governing one, it is not by any means the universal rule of our Constitution, and that the framers of our Government have deviated from it largely by way of check or limitation upon the possible and probable abuse of such a power. I have already referred to the trial by jury, where unanimity, which is of its very essence, is the rule. The trial by impeachment, where

two-thirds are required to convict, is another case where the majority idea is departed from. Again, in the enactment of our laws, the power of the majority in either House is controlled by the dissent of the other, while both are bridled by the one-man power residing in the President, and a two-third vote of each, although comprising of themselves, by the very terms of the Constitution, the entire legislative power, is required to enable them to act effectively alone; so that it may be truly said that the rule of legislation is a two-third vote. The like majorities are required for the alteration of the fundamental law itself, along with the consent of at least three-fourths of all the States. In all these cases the majority rule is not permitted to apply, and that for the transparent reason that the great vital interests of the State and people demand a higher measure of security. So little regard, indeed, is had for this cabalistic number, which is supposed to be so full of preternatural virtue, that a departure may be witnessed even in the opposite direction, in the rule which prevails in nearly all the States in the choice of Presidents and Congressmen, at Federal as well as State elections, that a mere plurality, which is only another name for a minority, may elect to the most important offices.

If the majority principle is the rule in the courts, and generally at the ballot-box, it rests only on the same grounds of convenience that have tolerated and recommended the rule of a plurality. It is a necessity that wherever there is a diversity of opinion the larger number shall prevail if there is to be any decision at all; and therefore it is, that by the rule of the common law, which is the growth of a nation that never recognized the rule of a majority in affairs of state, a power delegated to three or more persons for a public purpose, is exercisable by a majority of the persons named, while a merely private authority cannot be executed by any number less than the whole. (6 Johnson's Report, 38.) The consequence in the latter case is, that it must fail altogether in the event of a difference of opinion, which in affairs of state would be entirely inadmissible, wherever any positive act is to be done. In the ordinary course of judicial proceedings it may be admitted that the rule of unanimity would be, if not absolutely impracticable, as I think it is, a source of endless and infinite embarrassment, and result unquestionably in the great delay, if not the absolute denial, of justice. In the case, however, of a question as to the constitutionality of an act of Congress there is no such exigency. The requirement of unanimity will only give to the law-making power the benefit of the favorable presumption to which no lawyer will dispute that it is entitled, and fortify that presump-

tion with the advantage of any doubt, by treating its own decisions as the rule that is to govern the courts until, at least, they shall have been reversed by the united and concurring voices of the whole of that judicatory which claims to hold a delegated power to sit in judgment upon its authority. There will be no such inconvenience as a failure to decide. When the judges differ they will have already decided that the law is constitutional by failing to agree that it is otherwise, and the law of Congress will prevail, as it ought to do, whenever they cannot be brought to agree that it is wrong.

Having thus shown, as I think, the entire reasonableness and propriety of the change proposed, the next and last question is as to our power to effect it. And here, I think, there is no doubt or difficulty.

In the first place, then, the Constitution provides that—

“The judicial power shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish.”

There is nothing here, however, as to the number of judges who shall compose it; nothing as to the number who shall be competent to pass upon such questions as may come before it. It is unquestionable that Congress may fix the number of the court at its own discretion, and it has always done so. It is equally clear that it may determine how many of them shall be required to constitute a court for business purposes, and this it has also done by declaring how many shall be necessary to make a quorum. As the law now stands it requires more than two-thirds of that tribunal, as at present organized, for this purpose. The constitutionality of that law has never been doubted by anybody. If it was valid when enacted, it is certainly not made otherwise by the reduction that has since taken place in the number of the judges. If it is still the law, then, by a further reduction of the number, the now existing quorum might become the whole, and upon this argument the constitutionality of so much of the amendment at least as requires a hearing before a full bench is clearly demonstrated.

And now, in the second place, as to the power of Congress to require the concurring opinions of the whole of what it may choose to declare a quorum, upon any decision which they may propose to make against the validity of any of its laws.

It is to be remembered always that the authority of the court is a purely delegated one. It does not follow, therefore, as a conclusion of reason, from the doctrine that a majority of several joint owners may dispose of the joint property, or

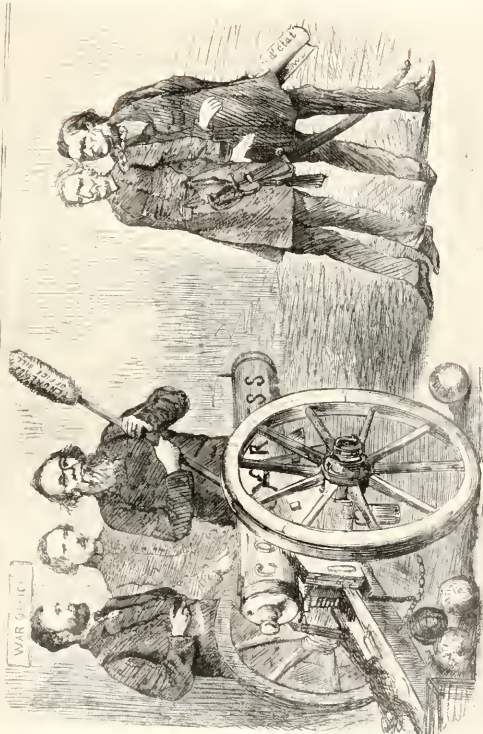
because a corporate body may act in the same way in relation to a matter which concerns themselves, that the same rule shall apply to a public trust, except, perhaps, in cases where it is incapable of execution in any other way. The people are entitled to the benefit of the aggregate wisdom of the bench, in the concurring judgments of all those who compose it. The Supreme Court might have been constituted of a single judge, and ought to, and perhaps would have been so constituted but for the proverbial and generally received hypothesis, that wisdom is to be found rather in "the multitude of counsellors" than in the few—not, however, in view of their ultimate disagreement, but to the end that, by comparison and even the possible shock and conflict of opinions, the truth may be evolved and harmony secured, just as in the system of the universe, it is said by the poet, that "all nature's difference makes all nature's peace." It can hardly be supposed that, in the constitution of a bench of eight or nine judges, it was intended that five only of the number should decide, or expected that a sound conclusion could be reached by any result so near an equipoise. To claim for this larger fraction the power of a constructive whole is not too strongly characterized by Mr. Burke, in the passage already cited, as "one of the most violent fictions of positive law that have ever been or can be made on the principles of artificial incorporation," and "cannot be so made, in a Commonwealth, without a positive law to recognize it." There is no law, however, in the present case, except the common law, resting on the reason of the thing, which is only its supposed necessity in ordinary cases; and this, as a mere rule of procedure, not entering into the constitution of the tribunal, and only prescribing a law for its government. If it inhered necessarily in that constitution—if it were of the essence of a court that it should act in all cases by mere majorities—if, in other words, it were strictly definable as a machine whose principle of motion was of that sort only, it might be objected, perhaps, that the Constitution had settled it. But this, I suppose, will hardly be pretended by anybody. In any other aspect of the question, however, it is but a rule of the common law for the regulation and more effective working of these tribunals; in which case there is nothing, of course, to prevent its abrogation by the power that makes and unmakes the law, in accordance with its own sovereign will, which is only the will of the people declaring itself through their representatives. So long as the authority to decide is still left and still exercisable by the courts, at their own discretion, and upon their own judgments, they have no more right to complain that they are all required to agree in

order to nullify the law than that they are not now permitted to do the same thing, as a quasi-corporate body, without the concurrence of a majority of such a quorum as it has pleased the Congress of the United States to indicate.

It is not necessary, however, to either of the pending amendments, to borrow the aid of the general principle that Congress may alter and modify the rule of the common law. The power is to be found in the Constitution itself, so far at least as regards the appellate jurisdiction of the court, which is the whole extent of this bill. That jurisdiction which extends to all cases, except those "affecting ambassadors, other public ministers and consuls, and those in which a State is a party," is conferred only with the express reservation that it shall be exercised and enjoyed "with such exceptions and under such regulations as the Congress shall make." What is the meaning of this language? The word "regulations" imports no more than rules or laws. That it carries with it any power to change the rule of decision, so as to impose another law upon the court than the action of its own judicial mind, or to do anything further than prescribe the *mode* of decision, I do not claim. It will not be disputed, at least, that under this provision it may limit the jurisdiction to such cases as it thinks proper, and settle in its own way the whole process of removal to, and treatment in the appellate court. If it shall think proper, then, to accord that jurisdiction only on the condition that none of its own acts shall be overruled on constitutional grounds without the judgment of an undivided court, who shall gainsay its right so to do, when it may even refuse the jurisdiction altogether where the court below may have affirmed the validity of its enactments?

And now, having fully vindicated, as I trust I have done, the principles of the amendment I have had the honor to submit, covering, as it does, as well the modification on which the Judiciary Committee has agreed, and which in default of the higher security will not be unacceptable to me, I must be allowed a word in conclusion on the reasons which have prompted the introduction and agitation at the present moment of a question that seems, in some measure, to have taken the press and country and even the profession by surprise, as a very novel if not a very bold experiment.

It will be said, perhaps, as it has already been more than whispered in some quarters of the Union, that this alarming proposition is only a mere expedient for the time, intended to serve the purposes of the moment, and with a view only to a particular case; just as the important provision of the tenure-of-office law extending its operation to the heads of Depart-



THE SITUATION.

Half-tone of cartoon in *Harper's Weekly* of March 7, 1868, in the Philadelphia Library



ments, which without much active sympathy or support from any quarter, and only by persevering and persistent effort, and after repeated defeats, I was happily enabled to see engrafted upon this law, against the apparent sense of the Senate and the unyielding opposition of a large portion of the Republican members of this House, has been published to the world through all the organs of public opinion, until it has persuaded everybody here and the echo of it has come back even from the other side of the Atlantic, as a mere party contrivance to save a particular officer—who was known by me at the time to be himself opposed to it—instead of a great measure of state, prompted by a conviction of the absolute necessity of securing the independence of a set of functionaries who had come to look upon the master of their fortunes as the rightful master of their wills, and intended for all heads of Departments and all time. The impatient urgency with which the pending measure is just now pressed, even in its imperfect shape, after having slept so long undisturbed, may seem to give an air of plausibility to this suggestion. If the fact of its introduction nearly a year ago is not a sufficient answer, I may be allowed to say, at least for myself, that I have never belonged to that timid school of practitioners, which deals only in palliatives, when great public evils which threaten the safety of the State are to be remedied. When I beheld the law obstructed on system, and arrived at the conviction—shared with me by a majority of this House—that the supreme Executive Magistrate of this nation, the officer intrusted under the Constitution with the execution of its laws, instead of performing that duty had disclosed a settled purpose to thwart your measures and defy your will, I was at once prepared to meet that exigency by the complete and obvious and radical measure of relief, which I thought the Constitution had placed in our hands, instead of resorting to any evasive or circuitous process, any mere experiments of doubtful validity or dangerous example, to accomplish the same object. When I saw again the rare chance, the golden opportunity, of correcting a capital error, canonized in some sort by a practice coeval with the Government, in the concession of the absolute power of removal to the President, which had been so fatally used and abused, I was equally ready to take advantage of the feeling of peril engendered by the usurpations of that officer, for the purpose of accomplishing a long desiderated object, which would have been proper at all times, but had never been possible till now. So when the wild vagaries of the courts, the obvious political leanings of the judges in great affairs of State, and the atrocious and abominable doctrines to

which the highest of them was not ashamed to give utterance, had stripped them of the awful prestige—the more than Druidical sanctity—that had surrounded and covered them from the rude gaze of the people—when the very priesthood of the altar itself had drawn aside the curtain of the sanctuary before the eyes of the nation, in a revelation that surpassed in hideousness and horror all that the poet's conception had imagined of the impostor prophet, when he lifted his veil in the presence of his deluded followers and proclaimed in their ears in thunder tones:

"Here, ye wise saints, behold your light, your star!
Ye would be fools and victims, and ye are!"

I was equally prepared to improve the occasion, by striking boldly at the dangerous anomaly of a power in this nation that was higher than its Constitution and its laws. The time had not yet come to do this thing, until the red harvest of death had been gathered from the seed thus sown, in so many battle-fields; but revolutions are the opportunities of statesmen, and he is no statesman who hesitates when the way is providentially leveled before him, and he is thus invited to enter upon it; as he, too, is none, who dreads the idle and unmeaning taunt that he is merely legislating for the evil that is imminent, just as though it were not the business of the statesman to meet the danger that is exigent. In quiet times the chances for reform are rare. The measure now proposed was a proper one at all times. The present condition of the country only demonstrates, through an imminent peril, its absolute necessity.

The amendment of Mr. Williams was rejected, but, as General Grant at once restored the Secretaryship to Mr. Stanton upon the action of the Senate regarding him, the way was open for the President to make a new move, boldly ignoring the Tenure-of-Office Act by transferring all the property of Stanton's office to the Adjutant General, and attempting to make the latter the subject of the legal battle. This it was which at once determined the House upon impeachment proceedings and removed the contest from the field of the courts, because of the violation of the Tenure-of-Office Act. The vote was taken on February 24th, and stood 126 to 47.¹ Meanwhile, the testimony taken by the judiciary committee had been transferred to the committee on reconstruction, of which Mr. Stevens was chairman. At the latter gentleman's

¹ *Congressional Globe*, Fortieth Congress, 2d Session, Part 2, p. 1400.

Wilson Boutwell Logan
Butler Stevens Williams Bingham



THE MANAGERS OF IMPEACHMENT

Half-tone of a Brady photograph in possession of the
Misses Williams, Philadelphia



motion, a committee to prepare articles of impeachment, based on the Stanton incident, was appointed, with Mr. Boutwell as chairman. The articles finally adopted were a few direct charges of conspiracy with the Adjutant General in the removal of Stanton. On March 2d (1868) the House elected the managers of impeachment, the vote resulting as follows: John A. Bingham of Ohio, 114 (out of 118); George S. Boutwell of Massachusetts, 113; James F. Wilson of Iowa, 112; Benjamin F. Butler of Massachusetts, 108; Mr. Williams, 107; John A. Logan of Illinois, 106; and Thaddeus Stevens of Pennsylvania, 105—very nearly a reversal of the order in which they were nominated, the gentleman who nominated evidently intending Mr. Stevens for chairman. There were nine others who received a few votes, ranging from 1 to 22. This list had been determined in a caucus of the Republicans, and it is significant that when the managers themselves came to elect their chairman, Stevens, Logan and Butler voted for Boutwell, while Williams and Wilson preferred Bingham. The latter's dissatisfaction with the outcome—for Bingham and Wilson had opposed impeachment at first—led Boutwell to resign in favor of Bingham, so that the latter became chairman of the board.¹

To enter into all the details of the trial—or even to take note of all of Mr. Williams' own varied activities in Congress, which were by no means confined to this question—is not possible in limited space. The trial opened on March 13th (1868) before the Senate with the Chief Justice presiding.² What with all the preparation of procedure and examination of witnesses it was some days before the arguments began, and these were so numerous and extended that it was April 27th before the argument of Mr. Williams—the final one of the prosecution, except the closing one by their chairman—even began. It occupied two sessions of one day and a part of the next. "Of all the addresses made in this trial," says a late writer on the proceedings who does not favor Mr. Williams' side

¹ "Reminiscences of Sixty Years in Public Affairs," by George S. Boutwell, Vol. II, p. 119.

² The first session of the court was on this date. See supplement to *Congressional Globe*, "Trial of the President," 2d Session, Fortieth Congress, 1868.

of the case, "his was the most ornate in diction and metaphorical in style, and, in its description of the enormity of the defendant's guilt and its personal assaults upon Andrew Johnson, it was more hyperbolic and more bitter than even Mr. Boutwell's."¹ He adds, farther on, also, in reference to Chairman Bingham's closing address, "it does not rise to the heights of feeling we still detect beneath the ornate periods of Williams."²

"Mr. President and Senators of the United States," Mr. Williams began,³ "not unused to the conflicts of the forum I appear in your presence to-day in obedience to the command of the Representatives of the American people, under a sense of responsibility which I have never felt before. This august tribunal whose judges are the elect of mighty provinces—the presence at your bar of the Representatives of a domain that rivals in extent the dominion of the Cæsars, and of a civilization that transcends any that the world has ever seen, to demand judgment upon the high delinquent whom they have arraigned in the name of the American people for high crimes and misdemeanors against the State, the dignity of the delinquent himself, a king in everything but the name and paraphernalia and inheritance of royalty, these crowded galleries, and, more than all, that greater world outside which stands on tiptoe as it strains its ears to catch from the electric messenger the first tidings of a verdict which is either to send a thrill of joy through an afflicted land, or to rack it anew with the throes of anarchy and the convulsions of despair, all remind me of the colossal proportions of the issue you are assembled to try. I cannot but remember, too, that the scene before me is without example or parallel in human history. Kings, it is true, have been uncrowned, and royal heads have fallen upon the scaffold; but in two single instances only, as I think, have the formalities of law been ostensibly invoked to give a coloring of order and of justice to the bloody tragedy. It is only in this free land that a constitutional tribunal has been charged for the first time with the sublime task of vindicating an outraged law against the highest of its ministers, and passing judgment upon the question whether the ruler of a nation shall be stripped, under the law

¹ "The Impeachment and Trial of Andrew Johnson," by David Miller Dewitt, 1903, p. 483.

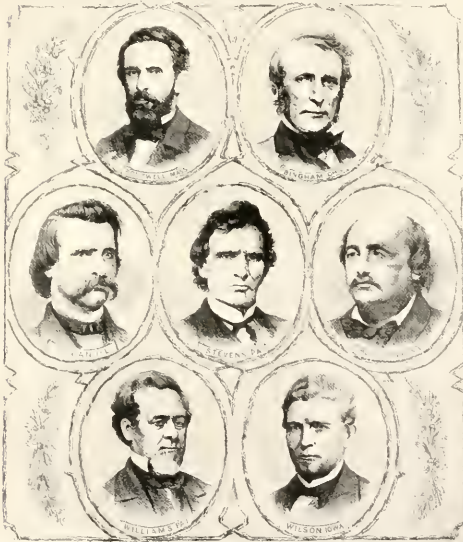
² "The Impeachment and Trial of Andrew Johnson," by David Miller Dewitt, 1903, p. 512.

³ Supplement to *Congressional Globe*, "Trial of the President," Fortieth Congress, 2d Session, 1868, p. 324.

HARPER'S WEEKLY

A JOURNAL OF CIVILIZATION

V. XII. No. 12. NEW YORK, SATURDAY, MARCH 11, 1868.



THE MANAGERS OF IMPEACHMENT

Half-tone of first page of *Harper's Weekly* of March 21, 1868, in the Philadelphia Library



and without shock or violence, of the power which he has abused.

"This great occasion was not sought by us. The world will bear the Representatives of the people witness that they have not come here for light and transient causes, but for the reason only that this issue has been forced upon them by a long series of bold assumptions of power on the part of the Executive, following each other with almost the blazing and blinding continuity of the lightning of the tropics, and culminating at last in a mortal challenge, which in the defense of their constitutional power as a branch of the American Congress, and as faithful sentinels over the liberties of the people, it was impossible for them to decline. With the first, open defiance of the legislative will they were left, of course, with no alternative but to abdicate their rule or to vindicate their right to make the law and see that it was obeyed. To this imperious necessity the people, in whose name they speak—a branch of that race whose quick sensibility to public danger has ever kept a sleepless vigil over its liberties—have yielded at last with a reluctance which nothing but the weariness of civil strife, the natural longing for repose, the apprehensive sense that it was 'better, perhaps, to bear the ills we had than fly to others that we knew not of'—the reflection that this Administration must have an end, and above all, perhaps, the delusive hope that its law-defying head himself would ultimately submit to a necessity which was as strong as fate, could have brought about, or would have, perhaps, excused. He has misunderstood their reasons, as his counsel show that they do now, mistaken their temper, and presumed upon their forbearance. He has forgotten that there was a point at which the conflict must end in the shock of two opposing forces, and the overthrow of one or other of the antagonistic elements. It was necessary, perhaps, in the order of Providence that he should reach that point by striking such a blow at the public liberties as should awaken the people as with an earthquake shock to the consciousness that the toleration of usurpation brings no security to nations.

"To show, however, how much they have borne and borne, perhaps forgiven, for the sake of peace, and how much they now pass over for the sake of a speedy solution of the impending trouble which has impeded the onward and upward movement of this great Government, and spread confusion and disorder through many of its Departments, and what, moreover, is the true import and significance of the acts for which the President is now arraigned, I must be allowed, with your indulgence, to take up for a moment the key which is required to unlock the

mysteries of the position. The man who supposes that this is but a question of the removal of an obnoxious officer, a mere private quarrel between two belligerents at the other end of the avenue, wherein it is of no great national consequence which of the opposing parties shall prevail, has no adequate apprehension of the gravity of the case, and greatly disparages the position and the motives of the high accusers. The House of Representatives espouses no man's quarrel, however considerable he may be. It has but singled out from many others of equal weight the facts now charged, as facts for the most part of recent occurrence, of great notoriety, and of easy proof, by way of testing a much greater question without loss of time. The issue here is between two mightier antagonists, one the Chief Executive Magistrate of this nation and the other the people of the United States, for whom the Secretary of War now holds almost the only strong position of which they have not been dispossessed. It is but a renewal on American soil of the old battle between the royal prerogative and the privileges of the Commons, which was closed in England with the reigns of the Stuarts—a struggle for the mastery between a temporary Executive and the legislative power of a free State over the most momentous question that has ever challenged the attention of a people. The counsel for the President, reflecting, of course, the views of their employer, would have you to believe that the removal of a departmental head is an affair of State too small to be worthy of such an avenger as this which we propose. Standing alone, stripped of all the attendant circumstances that explain the act and show the deadly *animus* by which it was inspired, it is not improbable that there are some who might have been induced to think, with them, that a remedy so extreme as this was more than adequate. It is only under the light shed upon the particular issue by antecedent facts which have now passed into history that the giant proportions of this controversy can be fully seen, if they are not made sufficiently apparent now by the defiant tone of the President and the formidable pretensions set up by him in his thoughtfully considered and painfully elaborated plea.

"The not irrelevant question 'Who is Andrew Johnson?' has been asked by one of his counsel, as it has often been by himself, and answered in the same way, by showing who he *was* and what he had done before the people of the loyal States so generously intrusted him with that contingent power which was made absolute only for the advantage of defeated and discomfited treason by the murderous pistol of an assassin. I will not stop now to inquire as to scenes enacted on this floor so eloquently rehearsed by the counsel for the President, with two



THE DISCERNMENT TALK—THE MEMBERS OF THE HOUSE OF REPRESENTATIVES PROCEEDING TO THE CHAMBER OF DELEGATES, FEBRUARY 18, 1868.

Stevens, Bingham, Butler, Logan, Williams and Wilson heading the procession. Hulton-Degeto of a cut in Harper's Weekly of April 7, 1868, in the Philadelphia Library



pictures of so opposite a character before me, or even to inquire whether his resistance to the hegira of the southern Senators was not merely a question, himself being the witness, as to the propriety and wisdom of such a step at that particular time. The opportunity occurs just here to answer it as it is put, by showing who Andrew Johnson *is*, and what he has been since the unhappy hour of that improvident and unreflecting gift. *Ehcu! quantum mutatus ab illo!* Alas, how changed, how fallen from that high estate that won for him the support of a too confiding people! Would that it could have been said of him as of that apostate spirit who was hurled in hideous ruin and combustion down from Heaven's crystal battlements, that even in his fall he 'had not yet lost all his original brightness nor appeared less than Archangel ruined.'

"The master-key to the whole history of his administration, which has involved not a mere harmless difference of opinion, as one of his counsel seems to think, on a question where gentlemen might afford to disagree without a quarrel, but one long and unseemly struggle by the Executive against the legislative power, is to be found in the fact of an early and persistent purpose of forcing the rebel States into the Union by means of his executive authority, in the interests of the men who had lifted their parricidal hands against it, on terms dictated by himself, and in defiance of the will of the loyal people of the United States as declared through their Representatives. To accomplish this object, how much has he not done and how much has a long-suffering people not passed over without punishment and almost without rebuke? Let history, let your public records, which are the only authentic materials of history, answer, and they will say that—

"For this, instead of convening the Congress in the most momentous crisis of the State, he had issued his royal proclamations for the assembling of conventions and the erection of State governments, prescribing the qualifications of the voters, and settling the conditions of their admission into the Union.

"For this he had created offices unknown to the law, and filled them with men notoriously disqualified by law, at salaries fixed by his own mere will.

"For this he had paid those officers in contemptuous disregard of law, and paid them, too, out of the contingent fund of one of the Departments of the Government.

"For this he had supplied the expenses of his new governments by turning over to them the spoils of the dead confederacy, and authorizing his satraps to levy taxes from the conquered people.

"For this he had passed away unnumbered millions of the public property to rebel railroad companies without consideration, or sold it to them in clear violation of law, on long credits, at a valuation of his own and without any security whatever.

"For this he had stripped the Bureau of Freedmen and Refugees of its munificent endowment, by tearing from it the lands appropriated by Congress to the loyal wards of the Republic, and restoring to the rebels their justly forfeited estates after the same had been vested by law in the Government of the United States.

"For this he had invaded with a ruthless hand the very centralia of the Treasury, and plundered its contents for the benefit of favored rebels by ordering the restoration of the proceeds of sales of captured and abandoned property which had been placed in its custody by law.

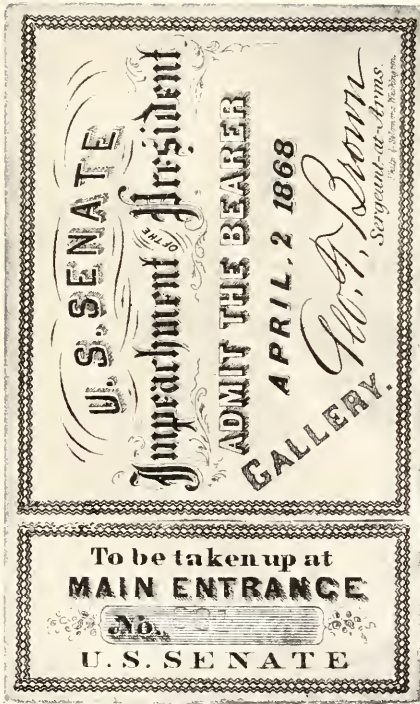
"For this he had grossly abused the pardoning power conferred on him by the Constitution in releasing the most active and formidable of the leaders of the rebellion with a view to their service in the furtherance of his policy, and even delegated that power for the same objects to men who were indebted to its exercise for their own escape from punishment.

"For this he had obstructed the course of public justice not only by refusing to enforce the laws enacted for the suppression of the rebellion and the punishment of treason, but by going into the courts and turning the greatest of the public malefactors loose, and surrendering all control over them by the restoration of their estates.

"For this he had abused the appointing power by the removal on system of meritorious public officers for no other reason than because they would not assist him in his attempt to overthrow the Constitution and usurp the legislative power of the Government.

"For this he had invaded the rightful privileges of the Senate by refusing to sent in nominations of officers appointed by him during the recess of that body, and after their adjournment reappointing others who had been rejected by them as unfit for the places for which they had been appointed.

"For this he had broken the privileges of, and insulted the Congress of the United States by instructing them that the work of reconstruction belonged to him only, and that they had no legislative right or duty in the premises, but only to register his will by throwing open their doors to such claimants as might come there with commissions from his pretended governments, that were substantially his own.



CARD OF ADMISSION TO THE IMPEACHMENT
Halftone of original in possession of the Misses Williams, Philadelphia

"For this, on their refusal to obey his imperial rescript, he had arraigned them publicly as a revolutionary assembly and not a Congress, without the power to legislate for the States excluded, and as 'traitors, at the other end of the line,' in actual rebellion against the people they had subdued.

"For this he had grossly abused the veto power, by disapproving every important measure of legislation that concerned the rebel States, in accordance with his public declaration that he would veto all the measures of the law-making power whenever they came to him.

"For this he had deliberately and confessedly exercised a dispensing power over the test-oath law, by appointing notorious rebels to important places in the revenue service, on the avowed ground that the policy of Congress, in that regard, was not in accordance with his opinions.

"For this he had obstructed the settlement of the nation, by exerting all his influence to prevent the people of the rebel States from accepting the constitutional amendment or organizing under the laws of Congress, and impressing them with the opinion that Congress was blood thirsty and implacable, and that their only refuge was with him.

"For this he had brought the patronage of his office into conflict with the freedom of elections, by allowing and encouraging his official retainers to travel over the country, attending political conventions and addressing the people in support of his policy.

"For this, if he did not enact the part of a Cromwell, by striding into the Halls of the Representatives of the people and saying to one man, 'You are a hypocrite;' to another, 'You are a whoremonger;' to a third, 'You are an adulterer;' and to the whole, 'You are no longer a Parliament;' he had rehearsed the same part substantially outside, by traveling over the country, and, in indecent harangues, assailing the conduct and impeaching the motives of its Congress, inculcating disobedience to its authority by endeavoring to bring it into disrepute, declaring publicly of one of its members that he was a traitor, of another that he was an assassin, and of the whole that they were no longer a Congress.

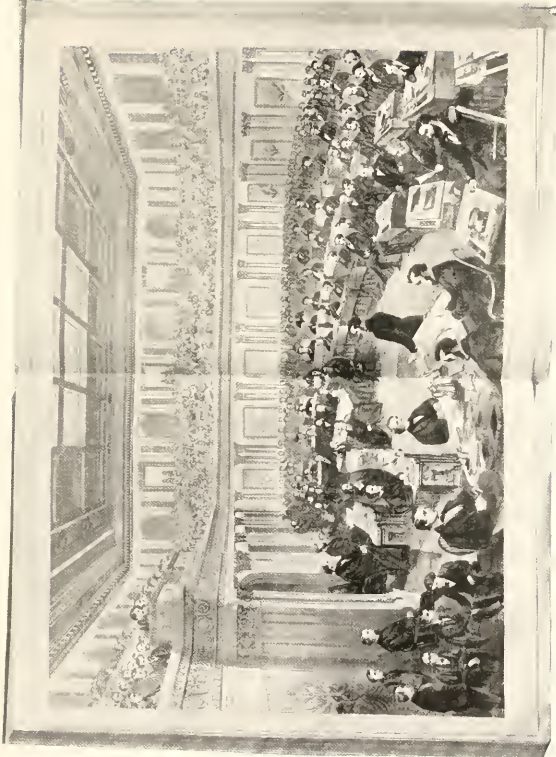
"For this, in addition to the oppression and bloodshed that had everywhere resulted from his known partiality for traitors, he had winked at, if not encouraged, the murder of loyal citizens in New Orleans by a confederate mob by holding correspondence with its leaders, denouncing the exercise of the right of a political convention to assemble peacefully in that city as an act of treason proper to be suppressed by violence, and com-

manding the military to assist, instead of preventing, the execution of the avowed purpose of dispersing them.

"For this, it is not too much to say, in view of the wrong and outrage and the cry of suffering that have come up to us upon every southern breeze, that he had in effect reopened the war, inaugurated anarchy, turned loose once more the incarnate devil of baffled treason and unappeasable hate, whom, as we fondly thought, our victories had overthrown and bound in chains, ordained rapine and murder from the Potomac to the Gulf, and deluged the streets of Memphis as well as of New Orleans, and the green fields of the South, already dotted with so many patriot graves, with the blood of martyred citizens.

"And because for all he has not been called to render an account, for the reasons that have been already named, it is now assumed and argued by his counsel that he stands acquitted by a judgment which disapproves its truth, although it rests for the most part on record evidence, importing that 'absolute verity' which is, of course, not open to dispute. This extraordinary assumption is but another instance of that incorrigible blindness on the part of the President in regard to the feelings and motives of Congress that has helped to hurry him into his present humiliating predicament as a criminal at your bar.

"But all these things were not enough. It wanted one drop more to make the cup of forbearance overflow—one other act that should reach the sensorium of the nation, and make even those who might be slow to comprehend a principle, to understand that further forbearance was ruin to us all; and that act was done in the attempt to seize by force or stratagem on that Department of the Government through which its armies were controlled. It was but a logical sequence of what had gone before—the last of a series of usurpations, all looking to the same great object. It did not rise, perhaps, beyond the height of many of the crimes by which it was ushered in. But its meaning could not be mistaken. It was an act that smote upon the nerve of the nation in such a way as to render it impossible that it could be either concealed, disparaged, or excused, as were the muffled blows of the pick-ax that had been so long silently undermining the bastions of the Republic. It has been heard and felt through all our wide domain like the reverberation of the guns that opened their iron throats upon our flag at Sumter; and it has stirred the loyal heart of the people again with the electric power that lifted it to the height of the sublimest issue that ever led a martyr to the stake or a patriot to the battlefield. That people is here to-day, through its Representatives on your floor and in your galleries, in the persons alike of the vet-



THE SENATE AS COURT OF IMPEACHMENT

Half-tone of a drawing by Davis in *Harpers's Weekly* of April 11, 1868, page 734, in the Philadelphia Library



erans who have been scarred by the iron hail of battle, and of the mothers and wives and daughters of those who have died that the Republic might live, as well as of the commissioned exponents of the public will, to demand the rewards of their sacrifices and the consummation of their triumph in the award of a nation's justice upon this high offender.

"And now as to the immediate issue, which I propose to discuss only in its constitutional and legal aspects.

"The great crime of Andrew Johnson, as already remarked, running through all his administration, is that he has violated his oath of office and his constitutional duties by the obstruction and infraction of the Constitution and the laws, and an endeavor to set up his own will against that of the law-making power, with a view to a settled and persistent purpose of forcing the rebel States into Congress on his own terms, in the interests of the traitors, and in defiance of the will of the loyal people of the United States.

"The specific offenses charged here, which are but the culminating facts, and only the last of a long series of usurpations, are an unlawful attempt to remove the rightful Secretary of War and to substitute in his place a creature of his own, without the advice and consent of the Senate, although then in session; a conspiracy to hinder and prevent him from resuming or holding the said office after the refusal of the Senate to concur in his suspension, and to seize, take, and possess the property of the United States in said Department; an attempt to debauch an officer of the Army from his allegiance by inculcating insubordination to the law in furtherance of the same object; the attempt to set aside the rightful authority of Congress and to bring it into public odium and contempt, and to encourage resistance to its laws by the open and public delivery of indecent harangues, impeaching its acts and purposes and full of threats and menaces against it and the laws enacted by it, to the great scandal and degradation of his own high office as President; and the devising and contriving of unlawful means to prevent the execution of the tenure-of-office, Army appropriation, and reconstruction acts of March 2, 1867.

"To all of these which relate to the attempted removal of the Secretary of War the answer is:

"1. That the case of Mr. Stanton is not within the meaning of the first section of the tenure-of-office act.

"*Second.* That if it be, the act is unconstitutional and void so far as it undertakes to abridge the power claimed by him of 'removing at any and all times all executive officers for causes

to be judged of by himself alone,' as well as of suspending them indefinitely at his sovereign will and pleasure; and,

"*Third*, That whether the act be constitutional or otherwise, it was his right, as he claims it to have been his purpose, to disobey and violate it with a view to the settlement of the question of its validity by the judiciary of the United States.

"And first, as to the question whether the present Secretary of War was intended to be comprehended within the first section of the act referred to.

"The defendant insists that he was not, for the reason that he derived his commission from Mr. Lincoln, and not being removed on his accession, continued by reason thereof to hold the office and administer its duties at his pleasure only, without having at any time received any appointment from himself; assuming, as I understand, either that under the proviso to the first section of this act the case was not provided for, or that by force of its express language, his office was determined by the expiration of the first term of the President who appointed him.

"The body, or enacting clause of this section, provides that *every* person then holding any civil office who had been appointed thereto by and with the advice and consent of the Senate, or who should be thereafter appointed to any such office, should be entitled to hold until a successor is appointed in the like manner.

"It is clear, therefore, that its general object was to provide for all cases, either then existing or to happen in the future.

"It is objected, however, that so much of this clause as refers to the heads of Departments is substantially repealed by the saving clause, which is in the following words:

"*Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.'

"This proviso was the result of a conference on the disagreeing votes on the amendment of the House striking out the exception in favor of the heads of Departments, and was suggested—if he may be excused the egotism—by the individual who now addresses you, and to whom, as the mover and advocate of the amendment, was very naturally assigned the duty of conducting the negotiation on the part of the House, for the purpose of obviating the objection taken in debate on this floor by one of the Senate managers, that the effect of the amendment



WILLIAM M. FVERTS

Half-tone of a contemporary photograph by Brady, negative in possession
of L. C. Handy, Washington, D. C.



would be to impose on an incoming President a Cabinet that was not of his own selection. I may be excused for speaking of its actual history, because that has been made the subject of comment by the learned counsel who opened this case in behalf of the President. If it was intended or expected that it should so operate as to create exceptions in favor of an officer whose notorious abuse of power was the proximate cause, if not the impelling motive for the enactment of the law, I did not know it. It will be judged, however, by itself, without reference either to the particular intent of him who may have penned it, or to any hasty opinion that may have been expressed in either House as to the construction of which it might be possibly susceptible.

"The argument of the defendant rests upon the meaning of the word 'appointed.' That word has both a technical and a popular one. In the former, which involves the idea of a nomination and confirmation in the constitutional way, there was no appointment certainly by Mr. Johnson. In the latter, which is the sense in which the people will read it, there unquestionably was. What, then, was meant by the employment of this word?

"It is a sound and well-accepted rule in all the courts, in exploring the meaning of the law-giver, especially in cases of remedial statutes, as I think this is, if it is not rather to be considered as only a declaratory one in this particular, to look to the old law, the mischief and the remedy, and to give a liberal construction to the language *in favorem libertatis*, in order to repress the mischief and advance the remedy; taking the words used in their ordinary and familiar sense, and varying the meaning as the intent, which is always the polar star, may require. Testing the case by this rule what is to be the construction here?

"The old law was—not the Constitution—but a vicious practice that had grown out of a precedent involving an early and erroneous construction of that instrument, if it was intended so to operate. The mischief was that this practice had rendered the officers of the Government, and among them the heads of Departments, the most powerful and dangerous of them all, from their assumed position of advisers of the President, by the very dependency of their tenure, the mere ministers of his pleasure, and the slaves of his imperial will, that could at any moment, and as the reward of an honest and independent opinion, strip them of their employments, and send them back into the ranks of the people. The remedy was to change them from minions and flatterers into *men*, by making them free, and to secure their loyalty to the law by protecting them from the power that might constrain their assent to its violation. To

accomplish this object it was necessary that the law should cover all of them, high and low, present and prospective. That it could have been intended to except the most important and formidable of these functionaries, either with a view to favor the present Executive, or for the purpose of subjecting the only head of a Department who had the confidence of Congress to his arbitrary will, is as unreasonable and improbable, as it is at variance with the truth of the fact and with the obvious general purposes of the act.

"For the President of the United States to say, however, now, after having voluntarily retained Mr. Stanton for more than two years of his administration, that he was there only by sufferance, or as a mere *movable*, or heirloom, or incumbrance that had passed to him with the estate, and not by virtue of his own special appointment, if not 'paltering with the people in a double sense,' has very much the appearance of a not very respectable quibble. The unlearned man who reads the proviso—as they for whose perusal it is intended will read it—and who is not accustomed to handle the metaphysic scissors of the professional casuists who are able 'to divide a hair 'twixt north and northwest side,' while he admits the ingenuity of the advocate, will stand amazed, if he does not scorn the officer who would stoop to the use of such a subterfuge.

"Assuming, however, for the sake of argument, that the technical sense is to prevail, what is to be its effect? Why only to make the law-giver enact a very unreasonable and impossible thing, by providing in words of the *future* tense, that the commission of the officer shall expire nearly two years *before* the passage of the law, which is a construction that the general rule of law forbids! To test this let us substitute for the general denominational phrases of 'Secretary of War, of State, and of the Navy,' the names of Messrs. Seward, Stanton, and Welles, and for that of the President who appointed them, the name of Lincoln, and the clause will read: '*Provided*, That Messrs. Seward, Stanton, and Welles, shall hold their offices respectively for and during the term of Abraham Lincoln, and for one month thereafter.' The effect will then be to put you in the position of having enacted not only an *absurdity*, but an *impossibility*. But on this there are at least two rules of interpretation that start up in the way of the solution. The first is that it is not respectful to the Legislature to presume that it ever intended to enact an absurdity, if the case is susceptible of any other construction; and the second that—

"'Acts of Parliament that are impossible to be performed are of no validity; and if there arise out of them collaterally any absurd

consequences manifestly contradictory to common reason, they are, with regard to these collateral consequences, void.'—1 *Blackstone's Commentaries*, 91.

"If the effect of the proviso, however, upon something analogous to the doctrine of *cy pres*, or, in other words, of getting as near to its meaning as possible, was to determine the office at the time of the passage of the law, then, on the other hand, the retention of the officer by the President for five months afterward, and through an intervening Congress, without a commission or even a nomination, was a breach of the law, and therefore a misdemeanor in itself; which he could hardly plead, and would scarcely ask you to affirm, against the general presumption of the faithful performance of official duty for the purpose of sheltering him from the consequences of still another violation of the law.

"Assuming again, however, that, as is claimed by the defense, the case of Mr. Stanton does not fall within the proviso, what, then, is the result? Is it the predicament of a *casus omissus* altogether? Is he to be hung up, like Mahomet's coffin, between the body of the act and the proviso, the latter repudiating the former on the pretext of an exception, and then repudiating the exception itself as to the particular case; or is the obvious and indisputable purpose of providing for all cases whatever, to be carried out by falling back on the general enacting clause which would make him irremovable by the President alone, and leaving him outside of the provision as to *tenure*, which was the sole object of the exception? There is nothing in the saving clause which is at all inconsistent with what goes before. The provision that takes every officer out of the power of the President is not departed from in that clause. All it enacts is that the tenure shall be a determinate one in cases that fall within it. If Mr. Stanton was appointed by President Johnson within the meaning of the proviso, he holds, of course, until the expiration of his term. If not, he holds subject to removal like other officers under the enacting clause. It has been so often asserted publicly as to have become a generally accredited truth, that the special purpose of the act was to protect him. I do not affirm this, and do not consider it necessary that I should, or important to the case whether he favored the passage of the law or not. It will be hardly pretended, however, by anybody, that he was intended to be excluded entirely from its operation.

"Nor is the case helped by the reference to the fourth section of the act, which provides that nothing therein contained shall be construed to extend the term of any office the duration of which is limited by law. The office in question was one of

those of which the tenure was indefinite. The construction insisted on by me does not extend it. The only effect is to take away the power of removal from the President alone and restore it to the parties by whom the Constitution intended that it should be exercised.

"Assuming, then, that the case of Mr. Stanton is within the law, the next question is as to the validity of the law itself. And here we are met, for the first time in our history as a nation, by the assertion, on the part of the President, of the illimitable and uncontrollable power under the Constitution, in accordance, as he insists, with the judicial opinion, the professional sentiment, and the settled practice under the Government of removing at any and all times all executive officers whatever, without responsibility to anybody, and as included therein the equally uncontrollable power of suspending them indefinitely and supplying their places from time to time by appointments made by himself *ad interim*. If there be any case where the claim has heretofore extended, even in theory, beyond the mere power to create a vacancy by removal during the recess of the Senate, I do not know it. If there be any wherein the power to suspend indefinitely, which goes even beyond this, has been asserted, it is equally new to me. This truly regal pretension has been fitly reserved for the first President who has ever claimed the imperial prerogative of founding governments by proclamation, of taxing without a Congress, of disposing of the public property by millions at his own will, and of exercising a dispensing power over the laws. It is but a logical sequence of what he has been already permitted to do with absolute impunity and almost without complaint. If he could be tolerated thus far, why not consummate the work which was to render him supreme, and crown his victory over the legislative power by setting this body aside as an advisory council, and claiming himself to be the rightful interpreter of the laws? The defense made here is a defiance, a challenge to the Senate and the nation, that must be met and answered just now in such a way as shall determine which, if any, is to be to the master. If the claim asserted is to be maintained by your decision, all that will remain for you will be only the formal abdication of your high trust as part of the appointing power, because there will be then absolutely nothing left of it that is worth preserving.

"But let us see what there is in the Constitution to warrant these extravagant pretensions, or to prevent the passage of a law to restore the practice of this Government to the true theory of that instrument.

"I do not propose to weary you with a protracted examination of this question. I could not add to what I have already said on the same subject in the discussion in the House of the bill relating to removals from office in December, 1866, to which I would have ventured to invite your attention, if the same point had not been so fully elaborated here. You have already passed upon it in the enactment of the present law by a vote so decisive and overwhelming, and there is so little objection on the part of the counsel for the President to the validity of that law, that I may content myself with condensing the arguments on both sides into a few general propositions which will comprehend their capital features.

"The case may be stated, as I think, analytically and synoptically thus:

"The first fact to be observed is, that while the Constitution enumerates sundry offices, and provides the manner of appointment in those cases, as well as in 'all others to be created by law,' it prescribes no tenure except that of good behavior in the case of the judges, and is entirely silent on the subject of removal by any other process than that of impeachment.

"From this the inferences are:

"1. That the tenure of good behavior, being substantially equivalent to that for life, the office must in all other cases be determinable at the will of some department of the Government, unless limited by law; which is, however, but another name for the will of the law-maker himself. And this is settled by authority.

"2. That the power of removal at will, being an implied one only, is to be confined to those cases where the tenure is not ascertained by law; the right of removal in any other form than by the process of impeachment depending entirely on the hypothesis of a will of which the essential condition always is that it is free to act without reason and without responsibility.

"3. That the power of removal, being implied as a necessity of state to secure the dependence of the officer on the Government, is not to be extended by construction so as to take him out of the control of the Legislature, and make him dependent on the will of the Executive.

"The next point is that the President is by the terms of the Constitution to 'nominate, and by and with the advice and consent of the Senate appoint,' to all offices, and that without this concurrence he appoints to none except when authorized by Congress. And this may be described as the *rule* of the Constitution.

"The exceptions are:

"1. That in the cases of inferior offices the Congress may lodge this power with the President alone or with the courts or the heads of Departments; and

"2. That in cases of vacancy happening during the recess of the Senate he may—not *appoint*—but *fill them up* by granting commissions to expire at the end of the next session of that body.

"From which it appears—

"1. That the President cannot, as already stated, in any case, appoint alone without the express authority of Congress, and then only in the case of inferior offices.

"2. That the power to supply even an accidental vacancy was only to continue until the Senate was in a condition to be consulted and to advise and act upon the case; and

"3. As a corollary from these two propositions, that if the power to remove in cases where the tenure is indefinite be, as it is solemnly conceded by the Supreme Court of the United States *in re Heenan* (13 Peters) an incident to the power to appoint, it belongs to the President and Senate, and not to the President alone, as it was held in that case to be in the judge who made the appointment.

"The argument upon which this implied and merely inferential power, not of 'filling up,' but of *making* a vacancy during the recess—which is now claimed to extend to the making of a vacancy at any time—has been defended, is—

"*First.* The possible necessity for the exercise of such a power during the recess of the Senate, or, in other words, the argument *ab inconvenienti*.

"*Second.* That the power of removal is a purely executive function, which, passed by the general grant in the first section of the second article of the Constitution, would have carried the power to appoint, if unprovided for, and is to be considered in him in all cases wherein it has not been expressly denied or lodged in other hands; while the association of the Senate, the same not being an executive body, is an exception to the general principle, and must be taken strictly so as not to extend thereto.

"*Third.* That it is essential to the President as the responsible *head* of the Government, charged by his oath with the execution of the laws, that he should control his own subordinates, by making their tenure of office to depend upon his will, so as to make a unit of the Administration.

"The answer to the *first* of these propositions is that there is no necessity for the exercise of the power during the recess, because the case supposed may be provided for by Congress—as it has been by the act now in question—under its express

constitutional authority 'to make all laws which shall be necessary or proper for carrying into execution all powers vested in the Government, or in any Department thereof,' a power which, by the way, is very strangely claimed by one of the President's counsel to be an implied one.

"To the *second* the answer is that whether an executive power or not depends on the structure of the Government, or, in other words, on what the Constitution makes it; that the clause in question is but a distributive one; that if all executive power is in the President, then by parity of reason all legislative power is in Congress without reference to the Constitution; that the Senate is not only associated with the President in the general appointing power, but that the power itself may be withdrawn by Congress almost entirely from both, under the provision in regard to inferior offices, which would involve a repugnancy to the general grant relied on, if the power be an executive one; that if no provision had been made for appointment in the Constitution the power to supply the omission would have resulted to the law-maker under the authority just quoted, to make 'all laws that might be necessary or proper for carrying into execution all powers vested in the Government or any department thereof,' which carries with it the power to create all offices; and that, moreover, this power of removal, in the only case wherein it is referred to, is made a *judicial* one.

"To the *third* the answer is—

"1. That however natural it may be for the President, after an unchecked career of usurpation for three long years, during which he has used his subordinates generally as the slavish ministers of his will, and dealt with the affairs of this nation as if he had been its master also as well as theirs, he greatly mistakes and magnifies his office, as has been already shown in the fact that under the Constitution he may be stripped at any time by Congress of nearly the whole of the appointing power; and,

"2. That the responsibility of the President is to be graduated by, and can only be commensurate with, the power that is assigned to him; that the obligation imposed on him is to take care that the *laws* are faithfully executed, and not his *will*, which is so strangely assumed to be the only law of the exalted functionaries who surround him; and that it is not only *not* essential to the performance of their duty under the law that the heads of Departments should be the mere passive instruments of his will, but the very contrary.

"Upon this brief statement of the argument it would seem as if there could be no reasonable doubt as to the meaning of the

Constitution. But the high delinquent who is now on trial, feeling that he cannot safely rest his case here, and shrinking from the inexorable logic that rules it against him, takes refuge in the past, and claims to have found a new Constitution that suits him better than the old one, in the judicial authorities, in the opinion of the commentators, in the enlightened professional and public sentiment of the nation, and in a legislative practice and construction that are coeval with the Government, and have continued without interruption until the present time. A little inquiry, however, will show that there is no altar or sanctuary, no city of refuge here, to shelter the greatest of the nation's malefactors from the just vengeance of a betrayed and indignant people.

"And first, as to judicial authority. There are but three cases, I think, wherein these questions have ever come up for adjudication before the Supreme Court of the United States, and in all of them the decisions have been directly in conflict with the theory and pretensions of the President.

"The first was the familiar one of *Marbury vs. Madison*, 1 Cranch, 256, made doubly memorable by the fact that it arose out of one of the so-called midnight appointments made by the elder Adams—the same, by the way, whose casting vote as an executive officer turned the scale in favor of the power to which he was destined to succeed in the First Congress of 1789, on the eve of his retirement—under a law which had been approved only the day before, authorizing the appointment of five justices of the peace for the District of Columbia, to serve respectively for the term of five years. The commission in question had been duly signed and registered, but was withheld by his successor (Jefferson) on the ground that the act was incomplete without a delivery. It was not claimed by him that the appointment was revocable if once consummated. If it had been, the resistance would have been unnecessary, and the assertion of the right to the office an idle one. Chief Justice Marshall, in delivering the opinion of the court, holds this language:

"Where an officer is removable at the will of the Executive, the circumstance which completed his appointment is of no consequence, because the act is at any time revocable. But where the officer is not removable at the will of the Executive, the appointment is not revocable and cannot be annulled. Having once made the appointment his power over the office is terminated in all cases where by law the officer is not removable by him. Then, as the law creating the office gave the right to hold for five years independent of the Executive, the appointment was not revocable, but vested in the officer legal rights that are protected by the laws of his country.'

"The point ruled here is precisely the same as that involved in the tenure-of-office act, to wit: that Congress may define the tenure of any office it creates, and that once fixed by law it is no longer determinable at the will of anybody—the act being a mere substitution of the will of the nation for that of the Executive, by giving that will the form of law, which is, indeed, the only form that is consistently admissible in a government of law. The present Executive insists—as Jefferson did not—that he has the power under the Constitution to remove or suspend at any and all times any executive officer whatever for causes to be judged of by himself alone; and that, in the opinion of his advisers, this power cannot be lawfully restrained; which is in effect to claim the power to *appoint* without the advice and consent of the Senate, as he has just now done, as well as to *remove*.

"The next case in order is that of *ex parte* Heenan, reported in 13 Peters, which involved a question as to the right of the judge of the district court of Louisiana to remove, at his discretion, a clerk appointed by him indefinitely under the law. The court say there—Thompson, Justice, delivering the opinion—that—

"All offices, the tenure of which is not fixed by the Constitution or limited by law, must be held either during good behavior or at the will and discretion of some department of the Government, and subject to removal at pleasure."

"And again that—

"In the absence of all constitutional provisions or statutory regulation it would seem to be a sound and necessary rule to consider the power of removal as an incident to the power to appoint."

"They add, however—

"But it was very early adopted as the *practical* construction that the power was vested in the President alone, and that such would appear to have been the *legislative* construction, because in establishing the three principal Departments of State, War, and Treasury, they recognized the power of removal in the President, although by the act of 1798, establishing the Navy Department, the reference was not by name to him."

"The result was that upon the principles this enunciated, involving the exception as to cases where the tenure was limited by law, as laid down in *Marbury vs. Madison*, they declared the power of removal to have been well exercised by

the judge who made the appointment under the law, for the reason only that it was an incident thereto.

"It is well worthy of remark, however, in this connection, that although what is thus gratuitously said as to the practical construction in opposition to the rule there recognized does not conflict in any way with the doctrine of *Marbury vs. Madison*, it is entirely at variance, as seems to be confessed, with the decision itself, which, on the doctrine of Mr. Madison in the debate of 1789, that the power of removal was a strictly executive one, and passed by the general grant of the Constitution, unless expressly denied or elsewhere lodged, must have been inevitably the other way, because in that case it must have resulted, not to the judge, but to the President. Whether a mere permissive, *sub silentio*, exercise of a power like this, or even a temporary surrender on grounds of personal confidence or party favor, where it perhaps violated no constitutional interdict, and was, in point of fact, authorized as to all but the superior offices, can raise a prescription against a constitutional right, or how many laws it will require to abrogate the fundamental law, I will not stop now to inquire. It is sufficient for my purpose that the case decides that the power of removal is but an incident to the power of appointment, and that, of course, it can be exercised only by the same agencies, as the tenure-of-office act exactly provides.

"The next and last case is that of the United States *ex relatione vs. Guthrie*, reported in 17 Howard, 284, which was an application for a *mandamus* to the Secretary of the Treasury to compel him to pay the salary of a territorial judge in Minnesota, who had been removed by the President before the expiration of his term, which was fixed by law at four years. The case was dismissed upon the doctrine that the proceeding was not a proper one to try the title to an office, and therefore the question of the power to remove was not disposed of or discussed, except by Justice McLain, who dissented on the main point and felt called upon, of course, to pass upon the other. I refer to his opinion mainly for the purpose of borrowing, with a part of the argument, an important statement in relation to the views of the bench that was almost coeval with the Constitution itself on this question. He says, on page 306:

"There was great contrariety of opinion in Congress on this power. With the experience we now have in regard to its exercise there is great doubt whether the most enlightened statesman would not come to a different conclusion."

"The power referred to was that of the removal by the President of the heads of the principal Departments of the Government, as conceded by the acts of 1789.

"The Attorney General calls this a constitutional power. There is no such power given in the Constitution. It is presumed to be in the President from the power of appointment. This presumption, I think, is unwise and illogical. The reasoning is: The President and Senate appoint to office; therefore the President may remove from office. Now, the argument would be legitimate if the power to remove were inferred to be the same that appoints.

"It was supposed that the exercise of this power by the President was necessary for the efficient discharge of executive duties; that to consult the Senate in making removals the same as making appointments would be too tardy for the correction of abuses. By a temporary appointment the public service is now provided for in case of death; and the same provision could be made where immediate removals are necessary. The Senate, when called upon to fill the vacancy, would pass upon the demerits of the late incumbent.

"This, I have never doubted, was the true construction of the Constitution; and I am able to say it was the opinion of the late Supreme Court with Marshall at its head."

"And again:

"If the power to remove from office may be inferred from the power to appoint, both the elements of the appointing power are necessarily included. The Constitution has declared what shall be the executive power to appoint, and, by consequence, the same power should be exercised in a removal."

"It will be said, perhaps, that all this is qualified by the remark that 'this power of removal has been, perhaps, too long established and exercised to be now questioned.' It is enough, however, to refer to the observation which follows, that 'the voluntary action of the Senate and the President would be necessary to change the practice,' to show what was meant by him. Such events as our eyes have witnessed, and such a conjuncture of affairs following fast upon their heels as would leave the Executive with all his formidable patronage and all the prestige of his place, without even the meager support of a third in either House, were scarcely within the range of human probability. When he remarks, therefore, that it was '*perhaps* too late to question it,' he means, of course, 'to question it *successfully*,' as the context shows. If he had meant otherwise he would not have referred to a voluntary change of practice as operating a corresponding change of the Constitution. He was

too good a lawyer and too large a statesman to affirm that the fundamental law of a great State could be wrested from its true construction either by the errors of the Legislature, or the toleration of a mischievous practice and a monster vice for less than eighty years.

'It is apparent, then, from all the cases, that the judicial opinion, so far from sustaining the view of the President, settles at least two points which are fatal to his pretensions: *first*, that Congress may so limit the tenure of an office as to render the incumbent irremovable except by the process of impeachment; and *second*, that the power to remove, so far as it exists, is but an incident to the power to appoint.

"Nor is it any answer to say, as has been claimed in debate on this floor, that these were cases of *inferior* offices where, under the Constitution, it was within the power of Congress to regulate them at its discretion. There is nothing in the provision as to inferior offices to distinguish them from others beyond the mere article of *appointment*. This is a question of *tenure*, and that is equally undefined as to both, except in the few cases specially enumerated therein. It was equally within the power of Congress to regulate in one case as in the other. The right to regulate is a necessary result of the right to create. When it establishes an office, as it has established the departmental bureaux, by law, it has, of necessity, the right to prescribe its duties and say how long it shall be held and when it shall determine. When it does say so, it can hardly be maintained with any show of reason that a power which is only implied from the fact that the tenure of office has been left indefinite in the Constitution which has vested the establishment of offices in Congress, shall be held to operate to defeat its will and shorten the life of its own creature in cases where its legislation is express.

"And so, too, as to the doctrine that the power of removal is but an incident to the power to appoint. That is settled upon grounds of reason, as a general principle, which has no more application to inferior offices than to superior ones. The idea is that the power of removal wherever it exists is in the very nature of things but part and parcel of the power to appoint, and that as a consequence the power that makes, and none other, must unmake; and on this idea it was ruled in the particular case that the power to remove was in the judge, because the authority to appoint was there. It equally rules, however, that where the appointment is in the head of a Department the power of removal belongs to him: that where it is lodged by Congress in the President alone it is in him only; and where

it is in the President and Senate conjointly there it is in both; which is precisely the doctrine maintained by the minority in the Congress of 1789. It ought to be a sufficient answer, however, that no such distinction was taken by Justice Thompson in the Heenan case, although he referred to the departure from this rule in the practical construction which had assigned the power to the President alone.

"The judicial opinion having thus signally failed to support the dangerous heresies of the President, the next resort is to that of the statesmen, lawyers, and publicists who have from time to time illustrated our history. And here, too, it will be found that the great criminal who is at your bar has no better support than he has found in higher quarters.

"I am not here to question the doctrine which has been so strongly urged, upon the authority of Lord Coke, that contemporaneous exposition is entitled to great weight in law. Taking it to be sound, however, it will hardly be pretended, I suppose, that there is anything of this description which will compare in value with the authoritative, and I might almost say, oracular utterances of the Federalist, which was the main agent, under Providence, in securing for the Constitution the support of the people of the several States, and has since occupied the rank of a classic in the political literature of America. And yet, in the seventy-seventh number of that series, which is ascribed to the pen of Alexander Hamilton, himself perhaps 'the first among his peers' in the Convention which framed that instrument, it is assumed as an unquestionable proposition and that, too, in the way of answer to the objection of instability arising from frequent changes of administration, that inasmuch 'as the Senate was to participate in the business of appointments, its consent would therefore be necessary to displace as well as to appoint.' Nor was it considered even necessary to reason out a conclusion that was so obvious and inevitable. It does not seem to have been supposed by anybody that a power so eminently regal could ever be raised in the executive of a limited Government out of the mere fact of the silence of the Constitution on that subject and the failure to provide any other mode of removal than by the process of impeachment. If the conclusion, however, was not a sound one, then it was no better than a false pretense, which those at least who concurred in its presentation were morally estopped from controverting. And yet it is one of the distinguished authors of these papers, in his quality of a legislator, that the nation is mainly indebted for the vote which inaugurated and fastened so long upon it the mischievous and anti-republican doctrine and practice which it has cost a revolu-

tion to overthrow. It does not seem, however, to have effected any change in the opinions of the distinguished author, as we find him insisting in a letter written ten years afterward to James McHenry, then Secretary of War, that even the power to fill vacancies happening during the recess of the Senate is to be confined to 'such offices as having been once filled have become vacant by accidental circumstances.'

"From the time of the settlement of the policy of the Government on this subject by its first Congress down till the accession of the younger Adams in 1826, a period of nearly forty years, the question does not seem to have been agitated, for the very satisfactory reason that the patronage was so inconsiderable, and the cases of abuse so rare, as to attract no attention on the part of public men. In the last named year, however, a committee was raised by the Senate, headed by Mr. Benton, and composed of nine of the most eminent statesmen of that day, to consider the subject of restraining this power by legislation. That committee agreed in the opinion that the practice of dismissing from office was a dangerous violation of the Constitution, which had in their view been '*changed* in this regard *by construction and legislation*,' which were only another name for legislative construction, and reported sundry bills for its correction not unlike in some respects to the present law. Those bills failed of course, but with the public recognition of the new and alarming doctrine which followed the accession of the next Administration, that the public offices, like the plunder of a camp, were the legitimate spoils of the victorious party, the subject was revived in 1835 by the appointment of another committee, embracing the great names of Calhoun, Webster, and Benton, for the same object. The result of their labors was the introduction of a bill requiring the President in all cases of removal to state the reasons thereof, which passed the Senate by a vote of 31 to 16, or nearly two thirds of that body. In the course of the debate on that bill, Mr. Webster, whose unsurpassed, and, as I think, unequalled ability as a constitutional lawyer will be contested by nobody, held this emphatic language.

"After considering the question again and again within the last six years I am willing to say that, in my deliberate judgment, the original decision was wrong. I cannot but think that those who denied the power in 1789 had the best of the argument. It appears to me, after thorough and repeated and conscientious examination that an erroneous interpretation was given to the Constitution in this respect by the decision of the First Congress.'

"And again:

"I have the clearest conviction that they (the Convention) looked to no other mode of displacing an officer than by impeachment or the regular appointment of another person to the same place.'

"And further:

"I believe it to be within the just power of Congress to reverse the decision of 1789, and I mean to hold myself at liberty to act hereafter upon that question as the safety of the Government and of the Constitution may require.'

"Mr. Calhoun was equally emphatic in his condemnation of the power and speaks of previous cases of removal as 'rather exceptions than constituting a practice.'

"The like opinion was obviously entertained by both Kent and Story, the two most distinguished of the commentators on the Constitution, and certainly among the highest authorities in the country. The former, after referring to the construction of 1789 as but 'a loose, incidental, and declaratory opinion of Congress,' is constrained to speak of it as 'a striking fact in the constitutional history of our Government that a power so transcendent as that which places at the disposal of the President alone the tenure of every executive officer appointed by the President and Senate, should depend on *inference* merely, and should have been gratuitously declared by the First Congress in opposition to the high authority of the Federalist, and supported or acquiesced in by some of those distinguished men who questioned or denied the power of Congress to incorporate a national bank.' (1 Kent's Commentaries, sec. 16, p. 308.) The latter speaks of it with equal emphasis as 'constituting the most extraordinary case in the history of the Government of a power conferred by *implication* on the Executive by the assent of a bare majority in Congress which has not been questioned on many other occasions.' (2 Commentaries, sec. 1543.)

"The same opinion, too, is already shown upon the testimony of Judge McLain, as cited above, to have been shared by 'the old Supreme Court, with Marshall at its head.' It seems, indeed, as though there had been an unbroken current of sentiment from sources such as these through all our history against the existence of this power. If there be any apparently exceptional cases of any note but the equivocal one of Mr. Madison, they will be found to rest only, as I think, upon the legislation of 1789 and the long practice that is supposed to have followed it. I make no account of the opinions of Attorneys General, although I might have quoted that of Mr. Wirt, in 1818, to the effect that it was only when Congress had not undertaken to fix

the tenure of the office that the commission could run during the pleasure of the President. They belong to the same category as those of Cabinet officers. It may not be amiss, however, to add just here that although this question was elaborately argued by myself upon the introduction of the bill to regulate removals from office in the House of Representatives, which was substantially the same as the present law, which was depending at that time, no voice but one was lifted up in the course of a protracted debate against the constitutionality of the measure itself.

"What, then, is there in the legislation of 1789, which is claimed to be not only a contemporary but an authoritative exposition of the meaning of the Constitution, and has no value whatever except as the expression of an opinion as to the policy of making the heads of Departments dependent on the President, unless the acts of that small and inexperienced Congress are to be taken as of binding force upon their successors and as a sort of oracular outgiving upon the meaning of the Constitution?

"Whatever may have been the material provisions of the several acts passed at that session, for the establishment of these Departments, it is not to be supposed that it was intended to accomplish a result so clearly not within the province of the law-maker as the binding settlement of the sense of that instrument on so grave a question. The effect of these acts has, I think, been greatly misunderstood by those who rely on them for such a purpose. All that they amount to is the concession to the President, in such a form as was agreeable to his friends, of a power of removal which the majority was disposed to accord to him in cases where the tenure of the officer was left indefinite, and the office was therefore determinable at will, but which those friends declined to accept as a grant, because they claimed it as a right. The result was but a compromise, which evaded the issue by substituting an *implied* grant for an *express* one, and left the question in dispute just where it found it. The record shows, however, that even in this shape the bill finally passed the House by a vote of only 29 to 22. In the Senate, however, where the debate does not appear, it was carried only by the casting vote of the Vice President, not properly himself a legislative but an *executive* officer, who had a very direct interest in the decision.

"The case shows, moreover, as already suggested, that there was no question involved as to the duration of the office. Whether it could be so limited, as has been done in the tenure-of-office law, was not a point in controversy, and is not, of course, decided. That it might be so, is not disputed as to the

'inferior' offices. The thing itself was done, and the right to do it acquiesced in and affirmed, as shown already in the case of *Marbury vs. Madison*, as early as 1801. It cannot be shown, however, that there is any difference between the cases of *inferior* and *superior* offices in this respect. There is no word in the Constitution to require that the latter shall hold only *at pleasure*. Both are created by law, and Mr. Madison himself admits, in the debate of 1789, that 'the legislative power creates the office, defines the power, *limits its duration*, and annexes the compensation.' All that the Constitution contains is the exception from the general power of appointment in the authority to Congress to vest that power in inferior cases in the President alone, in the courts of law, or in the heads of Departments. But there is nothing here as to the power of removal—nothing but as to the privilege of dispensing with the Senate in the matter of appointments, and no limitation whatever upon its power over the office itself in the one case more than in the other.

"And now let me ask what did the decision amount to, supposing it had even ruled the question at issue, but the act of a mere Legislature with no greater powers than ourselves? Is there anything in the proceedings of the Congress of 1789 to indicate that it ever assumed to itself the prerogative of setting itself up as an interpreter of the fundamental law? The men who composed it understood their functions better than to suppose that it had any jurisdiction over questions of this sort. If it had, so have we, and *judgments* may be reversed on a rehearing, as constitutions cannot be. But if it did exist whence was it derived? How was the Congress to bind the people by altering the law to which it owed its own existence, and all its powers? It could not bind its successors by making even its own enactments irrevocable. If it had a right to give an opinion upon the meaning of the Constitution, why may we not do the same thing? The President obviously assumes that they were both wiser and better than ourselves. If the respect which he professes for their opinions had animated him in regard to the Congresses which have sat under his administration, the nation would have been spared much tribulation and we relieved of the painful necessity of arraigning the Chief Magistrate of the Republic at your bar for his crimes against order, and liberty, and his open defiance of law.

"However it may be with others, I am not one of those who think that all wisdom and virtue have perished with our fathers, or that they were better able to comprehend the import of an instrument with whose practical workings they were unfamiliar

than we who are sitting under the light of an experience of eighty years, and suffering from the mistakes which they made in regard to the future. They made none greater than the illusion of supposing that it was impossible for our institutions to throw up to the surface a man like Andrew Johnson; and yet it was this mistake—perhaps no other—that settled the first precedent, which was so likely to be followed, in regard to the mischievous power of removal from office. But if twenty-nine votes in the House at that day, making a meager majority of only seven, and nine only in a Senate that was equally divided, in the first hours of constitutional life, and with such a President as Washington, to fling a rose-colored light over the future of the Republic, had even intended to give, and did give, a construction to our great charter of freedom, what is to be said of 133 votes to 37, constituting more than three fourths of one House, and of 35 to 11, or nearly a like proportion of the other, in the maturity of our strength, with a population of nearly forty millions, and under the light of an experience which has proved that even the short period of eighty years was capable of producing what our progenitors supposed to be impossible even in the long tract of time?

“But there is one other consideration that presents itself just here, and it is this: it does not strike me by any means as clear that there was anything in the act of 1789, aside from any supposed attempt to give it the force of an authoritative exposition of the Constitution, that was necessarily inconsistent with the view of that instrument which I have been endeavoring to maintain. Taking the authority lodged by it with the President as a mere *general grant* of power, there was nothing certainly in its terms to prevent it. So far at least as regarded the *inferior* officers, it resulted from the express authority of Congress to vest the power of *appointment* in the President alone, that they might have even left the power of removal in the same hands also as an incident. And so, too, as to the superior ones. The power to remove in any case was but an implied one. If it was necessary, as claimed, to enable the Executive to perform his proper functions under the Constitution, instead of raising the power in himself by the illogical inference, that it must belong to him *qua* Executive, it presented one of the very cases for which it is provided expressly that Congress shall ‘make all laws that shall be necessary and proper for carrying into execution all power vested by the Constitution in the Government of the United States, or in any Department or officer thereof.’ To infer in the face of such a provision as this, that any or all powers necessary to either department of the Government belong to them, of

course, because they are necessary, is a reflection on the understandings of the framers of the Constitution, and its effect to nullify the provision itself, by enabling the other Departments of the Government to dispense entirely with the action of the law-maker.

"But, admitting the act of 1789 to import, in its full extent, all that it is claimed to have decided, it is further insisted that this untoward precedent has been ripened into unalterable law by a long and uninterrupted practice in conformity with it. If it were even true, as stated, there would be nothing marvelous in the fact that it has been followed up by other legislation of a kindred character. It is not to be doubted that a general opinion did prevail for many years that all the offices of the Government not otherwise provided for in the Constitution ought to be held at will, for the obvious reason, among others, that it rendered the process of removal easy by making an impeachment unnecessary. The only question in dispute was in whose hands this power could be most appropriately lodged. It so happened, however, that the first of our Presidents brought with him into the office an elevation of character that placed him above all suspicion, and assured to him a confidence so unbounded that it would have been considered entirely safe to vest him with unlimited command; and it was but natural, as it was certainly highly convenient, that the exercise of that will, which was to determine the life of the officer, should be lodged with him. It was so lodged.

"But is there anything remarkable in the fact that the precedent thus set should have been followed up in the practice of the Government? It would have been still more remarkable if it had been otherwise. It was a question of patronage and power—of rewarding friends, and punishing enemies. A successful candidate for the Presidency was always sure to bring in with him a majority in the popular branch at least, along with a host of hungry followers flushed with their victory and hungering after the spoils. Was it expected that they should abridge his power to reward his friends, or air their own virtue by self-denying ordinances? That would have been too much for men, and politicians, too. No. Though the wisest statesmen of the country had realized and deplored for forty years at least the giant vice which had been gnawing into the very entrails of the state, and threatened to corrupt it in all its members, there was no remedy left, but the intervention of that Providence which has purified the heart of the nation through the blood of its children, and cast down the man who 'but yesterday might have stood against the world,' so low, that with all

his royal patronage there are none left—no, I think not one—'so poor as to do him reverence.'

"It is not even true, however, that the precedent of the Congress of 1789 has been followed invariably and without interruption since that time. The history of our legislation shows not only repeated instances wherein the tenure of office has been so precisely defined as to take the case entirely out of the control of the Executive, but some in which even the power of removal itself has been substantially exercised by Congress, as one would suppose it might reasonably be, where it creates and may destroy, makes and may unmake, even the subject of controversy itself.

"The act of 1801, already referred to in connection with the case of Marbury and Madison, assigning a tenure of five years absolutely to the officer, involves a manifest departure from it.

"The five several acts of August 14, 1848, March 3, 1849, September, 1850, and May 3, 1854, providing for the appointment of judges in the Territories of Oregon, Minnesota, New Mexico, Kansas, and Nebraska, and fixing their terms of office at four years absolutely, are all within the same category.

"The act of 25th February, 1863, followed by that of June 3, 1864, establishing the office of Comptroller of the Currency, defining his term and making him irremovable except by and with the advice and consent of the Senate, and upon reasons to be shown, is another of the same description.

"The act of March 3, 1865, which authorizes any military or naval officer who has been dismissed by the authority of the President to demand a trial by court-martial, and in default of its allowance within six months, or of a sentence of dismissal or death thereby, avoids the order of the Executive; and the act of July 13, 1866, which provides that no officer in time of peace shall be dismissed except in pursuance of a sentence of a court-martial, are both examples of like deviation of the strongest kind, for the double reason that the President is, under the Constitution, the Commander-in-Chief of the Army and Navy of the United States, and none but *civil* officers are amenable to the process of impeachment, and that the officer dismissed is absolutely restored, awakened into new life, and raised to his feet by the omnipotent fiat of the legislative power.

"And, lastly, the act of 15th May, 1820, (3 Statutes, 582,) which dismisses by wholesale a very large and important class of officers at periods specially indicated therein, not only fixes the tenure prospectively, but involves a clear exercise of the power of removal itself on the part of the Legislature.

"Further developments in the same direction would no doubt reward the diligence of the more pains-taking inquirer. That, however, would only be a work of supererogation. Enough have been shown to demonstrate beyond denial that the practice relied on has been anything but uniform.

"To establish even a local custom or prescription the element of continuity is as important as that of time. Any break in that continuity by an adverse entry or even a continual claim, would arrest the flow of a statute of limitations against the rightful owner of a tenement. An interruption of the enjoyment would be equally fatal to a prescription. But are we to be told that a case which in this view would not even be sufficient to establish a composition for tithes, or a trifling easement as between individuals, is sufficient to raise a prescription against a constitutional right or to abrogate the fundamental law of a nation and bar the inappreciable inheritance of its people? The very statement of the proposition would seem to furnish its own refutation.

"But this is not all. If the case had even been one of uninterrupted continuity, how is it as to the element of time? To settle a custom, either public or private, it must have the hoar of antiquity upon it; its origin must be traced far back into the night of time, so far that no living memory can measure it, and no man can say that he has drunk at its head-springs or stood beside its cradle. What is the case here? It is a question of the fundamental law of a people whose dominions embrace a continent, and whose numbers are multitudinous as the stars of heaven. A little more than three quarters of a century will measure the career that they have thus far run. What a mere span is this? Why I have seen on this floor, a not uninterested spectator of this great drama, a veteran statesman, known by fame, and perhaps personally, to all of you, whose years go back behind your Constitution itself. But what is a century but the briefest hour in the life of a State? How is a mere non-user for seventy-five of its infant years to be set up either to bar a fundamental right, or to prove that it never existed? It required six centuries of struggle with the prerogative to settle the British constitution firmly upon the foundations of Magna Charta, and no hostile precedent of the reigns of either the Plantagenets or Tudors was allowed to stand in the way of the onward movement that culminated in the revolution of 1688. And yet it is gravely urged on us, that the conduct of our national life is to be regulated by the mistakes of its childhood, and that the grand patrimony of the Revolution has been squandered beyond recovery by the

thoughtless improvidence, or too generous and trustful prodigality of an earlier heir who had just come to his estate.

"And now I may venture to say, I think, that it has been shown abundantly that all the resources of the President on this point have failed him. The awards of reason, the judgments of the courts, the opinions of statesmen, lawyers, and publicists, the precedent of 1789, and the practice of the Government, are all against him."

At this point the effect of an illness showed itself so strongly that Manager Butler requested an adjournment on account of it. He was ready, however, the next day, and proceeded.

"Mr. President and Senators," he continued, "I have to thank you for the indulgence which you were kind enough to extend to me yesterday at a time when I very much wanted it. I shall endeavor, however, to testify my gratitude by not abusing it.

"Before I closed yesterday I was referring to the position taken by me, and, as I thought, sufficiently demonstrated, that the President had failed in all his supports; that the reason of the thing, the natural reason, the cultivated reason of the law, the judicial sentiment, the opinions of commentators, the precedent of 1789, and even the practice, were all against him; but then I suggested that there was one resource still left, and to that I now come, and that is in the opinion of what is sometimes called his *Cabinet*, the trusted counselors whom he is pleased to quote as the advisers whom the Constitution and the practice of the Government have assigned to him. If all the world has forsaken him, they, at least, are still faithful to the chief whom they have so long accompanied, and so largely comforted and encouraged through all his manifold usurpations.

"It is true that these gentlemen have not been allowed to prove, as they would have desired to do, that maugre all the reasoning of judges, lawyers, and publicists, they were implicitly of the opinion, and so advised the President, that the tenure-of-office law, not being in accordance with his will, was, of course, unconstitutional. It may be guessed, I suppose, without damage to our case, that if allowed they would have proved it. With large opportunities for information I have not heard of any occasion wherein they have ever given any opinion to the President, except the one that was wanted by him, or known to be agreeable to his will. If there had been time I should have been glad to hear from some of these functionaries on that

question. It would have been pleasant to hear the witness on the stand at least, discourse of constitutional law. If the public interest has not suffered, the public curiosity has at least been balked by the denial of the high privilege of listening to the luminous expositions which some of these learned Thebans, whose training has been so high as to warrant them in denouncing us all—the legislators of the nation—as no better than ‘Constitution tinkers,’ would have been able to help us with.

“It is a large part of the defense of the President, as set forth in his voluminous special plea, and elaborated in the argument of the opening counsel, not only that his Cabinet agreed with him in his views as to the law, but that if he has erred, it was under the advice received from those whom the law had placed around him. It is not shown, however, and was not attempted to be shown, that in regard to the particular offense for which he is now arraigned before you they were ever consulted by him. But to clear this part of the case of all possible cavil or exception, I feel that it will not be amiss to ask your attention to a few remarks upon the relations of the President with this illegitimate body, this excrescence, this mere fungus, born of decay, which has been compounded in process of time out of the heads of the Departments, and has shot up within the last few years into the formidable proportions of a directory for the general government of the State.

“The first observation that suggests itself is that this reference to the advice of others proceeds on the hypothesis that the President himself is not responsible, and is therefore at war with the principal theory of the defense, which is that he is the sole responsible head of the executive department, and must therefore, *ex necessitate*, in order to the performance of his appropriate duties, have the undisputed right to control and govern and remove them at his own mere will—as he has just done in the case of Mr. Stanton—a theory which precludes the idea of advice in the fact that it makes the adviser a slave. What, then, does the President intend? Does he propose to abandon this line of defense? He cannot do it without surrendering his case.

“Is it his purpose, then, to divert us from the track by doubling on his pursuers, and leading them off on a false scent, or does he intend the offer of a vicarious sacrifice? Does he think to make mere scapegoats of his counselors by laying all his multitudinous sins upon their backs? Does he propose to enact the part of another Charles, by surrendering another Strafford to the vengeance of the Commons? We must decline to accept the offer. We want no ministerial heads. We do not

choose in the pursuit of higher game to stoop to any ignobler quarry either on the land or on the sea. It would be anything but magnanimous in us to take, as it would be base in him to offer, the heads of those whom our own past legislation has degraded into slaves. When Cæsar falls his counselors will disappear along with him. Perhaps he thinks, however, that *nobody* is responsible. But shall we allow him to justify in one breath the removal of Mr. Stanton on the ground that under the law he was his master, and then in another, when arraigned for this, to say that he is not responsible because he took advice from those who are but mere automata—only his 'hands and voice,' in the language of his counsel—and no more than the mere creatures of his imperial will? This would be a sad condition, indeed, for the people of a Republic claiming to be free. We can all understand the theory of the British constitution. The king can do no wrong. The person of majesty is sacred. But then the irresponsibility of the sovereign is beautifully reconciled with the liberty of the subject, by holding the ministry responsible, and thus taking care that he shall get no bad advice from them. But what is to be our condition, with no recourse between the two, to either king or minister? It will be not unlike what is said in the touching plaint of the Britons, 'The barbarians drive us to the sea, and the sea drives us back again on the barbarians.'

"But who made these men the advisers of the President? Not the Constitution, certainly; not the laws, or they would have made them free. The Constitution has given to him no *advisers* but the Senate, whose opinion he scouts at and defies, because he cannot get from it the advice he wants, and would obtain, no doubt, if it were reduced to the condition of that of imperial Rome. All it provides in regard to the heads of Departments is that he may require the opinion in writing of each of them upon any subject relating to the duties of *his own special office*, and no more. He cannot require it as to other matters, and by the strongest implication it was not intended that he should take it on any matter outside of their own respective offices and duties. He has undoubtedly the privilege which belongs to other men, of seeking for advice wherever he may want it; but if he is wise, and would be honestly advised—as he does not apparently wish to be—he will go to those who are in a condition to tell him the truth without the risk of being turned out of office, as Mr. Stanton has been, for doing so. No tyrant who has held the lives of those around him in his hands, has ever enjoyed the counsels of any but minions and sycophants. If it had been the purpose of the framers of the Constitution to provide a council

for the President, they would have looked to it that he was not to be surrounded with creatures such as these.

"But then it is said that the practice of holding Cabinet councils was inaugurated by President Washington, and has since continued without interruption. It is unquestionable that he did take the opinions in writing of all the heads of Departments, on bills that were submitted to him in the constitutional way, and not unlikely that he may have consulted them as to appointments, and other matters of executive duty that involved anything like discretion. They may have met occasionally in after times upon the special invitation of the President. It was not, however, as I think, until the period of the war, when the responsibilities of the President, as Commander-in-Chief of the armies, were so largely magnified as to make it necessary that he should take counsel from day to day, that they crystallized into their present form, as a sort of institution of state; and not till the accession of Andrew Johnson, that they began to do the work of Congress, in a condition of peace, by legislating for the restoration of the rebel States. From that time forward, through all that long and unhappy interregnum of the law-making power, while the telegraph was waiting upon the action of those mysterious councils, that dark tribunal which was erecting States by proclamation, taxing the people, and surrendering up the public property to keep them on their feet, and exercising a dispensing power over the laws, had apparently taken the place of the Congress of the nation, with powers quite as great as any that the true Congress has ever claimed. To say that the acts of this mere cabal, which looked for all the world, like some dark conclave of conspirators plotting against the liberties of the people, were the results of free consultation and comparison of views, is to speak without knowledge. I for one mistrusted them from the beginning, and, if I may be excused the egotism again, it was under the inspiration of the conviction that they could not have held together so long under an imperious, self-willed man like the present Executive, without a thorough submission to all his views, that I was moved to introduce and urge, as I did, through great discouragements, but, thank God, successfully, the amendment to the tenure-of-office bill, that brings about this conflict. It has come sooner than I expected, but not too soon to vindicate, by its timely rescue of the most important of the Departments of the Government from the grasp of the President, the wisdom of a measure which, if it had been the law at the time of Mr. Johnson's accession, would, in my humble judgment, have set his policy aside, and made his resistance to the will of the loyal people, and his project of governing the nation without

a Congress, impossible. The veil has been lifted since the passage of this law, and those who wish, may now read in letters of living light the great fact, that during the progress of all this usurpation that has convulsed the nation, and kept the South in anarchy for three long years, there was scarce a ripple of dissent to ruffle the stagnant surface of those law-making and law-breaking cabals, those mere beds of justice, where, in accordance with the theory of the President himself, there was but one will that reigned undisputed and supreme.

"To insist, then, that any apology is to be found for the delinquencies of the President, in the advice of a Cabinet, where a difference of opinion was considered treason to the head, and loyalty to the law, instead of to the will of the President, punished by dismissal, is, as it seems to me, on his part, the very climax of effrontery. What adequate cause does the President now assign for the removal of Mr. Stanton? His counsel promised us in their opening, that they would exhibit reasons to show that it was impossible to allow him to continue to hold the office. They have failed to do it. They have not even attempted it. Was it because he had failed to perform his duties, or had in any way offended against the law? The President alleges nothing of the kind. Was it even a personal quarrel? Nothing of this sort is pretended either. All that we can hear of, is that there was a 'want of mutual confidence;' that 'his relations to Mr. Stanton were such as to preclude him from resorting to him for *advice*,' (Heaven save the mark!) and that he did not think he could be any longer safely responsible for him. His counsel say that Mr. Stanton is a thorn in his side. Well a thorn in the flesh is sometimes good for the spirit. But so are Grant and Sherman and Sheridan, and so is Congress, and so is every loyal man in the country who questions or resists his will. The trouble is, as everybody knows, that Mr. Stanton does not indorse his policy, and cannot be relied on to assist him in obstructing the laws of Congress; and that is just the reason why you want this thorn to 'stick,' and, if need be, prick and fester a little there, and must maintain it there, if you would be faithful to the nation and to yourselves. You cannot let Mr. Stanton go, by an acquittal of the President, without surrendering into his hands the very last fortress that you still hold, and are now holding only at the point of the bayonet.

"But there is a point just here that seems to have been entirely overlooked by the counsel for the President, to which I desire especially to invite your attention. It seems to have been assumed by them throughout—if it is not, indeed, distinctly asserted in the defendant's plea—that if they shall be able to

succeed in establishing a power of removal in the President, either under the Constitution or the act of 1789, erecting the Department now in question, he may exercise that power at his mere will and pleasure, without reason and without responsibility; and having failed to show any adequate cause, or indeed any cause whatever for the act done here, he stands, of course, on this hypothesis. But is this the law? Is there no such thing as an abuse of power, and a just responsibility as its attendant? Was it intended in either case—whether the power flowed from one source, or from the other—that it should be exercisable without restraint? That doctrine would be proper in a monarchy, perhaps, but is ill suited to the genius of institutions like our own. Nor was it the opinion of Mr. Madison, or those who voted and acted with him in the Congress of 1789. No man there who asserted the power of removal to be in the President, or concurred in bestowing it on him for the occasion, ever supposed that its exercise was to be a question of mere caprice, or whim, or will. To the objection that this would be the effect of the doctrine of removal, it was answered by Mr. Madison himself in these words:

“The danger consists merely in this: that the President can displace from office a man whose merits require that he should be continued in it. What will be the motive which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place he will be impeached by the House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.’

“And it was, no doubt, mainly on this argument that the power of removal was embodied in the law.

“What, then, have the President and his counsel to say in answer to this? Is the President impeachable on his own case, or does he expect to realize the fruits of the argument, and then repudiate the very grounds on which the alleged construction rests? Was Mr. Stanton a meritorious officer? Did his merits require that he should be continued in the place? No loyal man, I think, disputes that they did, and this Senate has already solemnly adjudged it, in their decision that, upon the reasons stated by the President, there was no sufficient cause for his removal, while none other have been since shown by the accused himself. What then, was the motive for this act of *maladministration*, as Mr. Madison denominates it? Nothing that we are aware of, except the fact that the President cannot control the War Office in the interests of his policy, so long as he is

there. Was this, then, a wanton removal? It was something more—it was a wicked one. And are we to be told now that he is bound to show no reasons, and cannot be compelled to answer for it to the nation, by those who claim the power of removal for him on the very footing that its abuse would be impeachable?

“But it is further strenuously argued, that although the law may be constitutional, and the case of Mr. Stanton within it, as it has been already held to be by this Senate, the case was not so clear a one as to authorize a charge of crime against the President, unless it can be shown that he has willfully misconstrued it; and that although wherever a law is passed through the forms of legislation, it is his duty to see that it is faithfully executed so long as it requires no more than ministerial action on his part, yet, where it is a question of cutting off a power confided to him by the Constitution, and he alone can bring about a judicial decision for its settlement, if, on due deliberation and advice, he should be of the opinion that the law was unconstitutional, it would be no violation of duty to take the needful steps to raise that question, so as to have it peacefully decided.

“Allow me to say in answer, that if even ignorance of the law, which excuses nobody else, can be held to excuse the very last man in the nation who ought to be allowed to plead it, the testimony shows, I think, that he did not misunderstand its meaning. His suspension of Mr. Stanton, which was an entirely new procedure, followed, as it was, by his report of the case to the Senate within twenty days after its next meeting, is evidence that he *did* understand the law as comprehending that case, and did not intend to violate it, if he could get rid of the obnoxious officer without resorting to so extreme and hazardous a remedy.

“But the question here is not so much whether he ignorantly and innocently mistook the law, as whether in the case referred to of an interference with the power claimed by him under the Constitution, he may suspend the operation of a law by assuming it to be unconstitutional, and setting it aside until the courts shall have decided that it is a constitutional and valid one. In the case at issue, it was not necessary to violate the law, either by contriving to prevent the incumbent from resuming his place under it, or turning him out by violence after he had been duly reinstated by the Senate, if he honestly desired to test its validity in the judicial forum. All that it was necessary for him to do, was to issue his order of removal, and give the officer a notice of that order, and its object. If he refused to obey, the next and obvious step would have been to direct the Attorney General

to sue out a writ of *quo warranto*, on his own relation. This was not his course. The remedy was not summary enough for his uses, as his special counsel, employed only after the arrest of his pseudo Secretary Thomas, testifies, because it would have allowed the law to reign in the meanwhile, instead of creating an interregnum of mere will by which he hoped to supersede it. His project was to seize the place; by craft, if possible; by force, if necessary. For this purpose he claims to have made an arrangement with General Grant for its surrender to himself, in case the judgment of the Senate should restore the officer, and now taxes that distinguished officer with bad faith to him individually, for his obedience to the law.

"It stands, therefore, upon his own confession, that he intended to prevent Mr. Stanton from resuming his position, in which case—as he well knew, and as his Attorney General knew, and must have informed him, there was no remedy at law for the ejected officer. Foiled and baffled by the integrity of Grant, after full deliberation he issues his order of removal on the 21st of February, and sends it by his lieutenant, Thomas, with a commission to himself to act as Secretary *ad interim*, and enter upon the duties of the office. He does not fail to suggest to him at the same time, that Stanton is a coward, and may be easily frightened out of the place with a proper show of energy on his part. He tells him also that he expects him to support the Constitution and the laws—as he understands them, of course. Thomas is a martinet. He knows no law, as he confesses, but the order of his Commander-in-Chief. He has been taught no argument but arms—no logic but the dialectics of hard knocks. Instructed by the President, he hopes to frighten Stanton by his big looks and horrent arms. He proceeds upon his warlike errand in all the panoply of a brigadier, and loftily demands the keys of the fortress from the stern warder, who only stipulates for twenty-four hours to remove his camp equipage and baggage. The conquest is apparently an easy one. He reports forthwith to his chief with the brevity of a Cæsar: '*Veni, vidi, vici.*' They rejoice, no doubt, together over the pusillanimity of the Secretary; and the puissant Adjutant then unbends, and flies for relaxation, after his heroic and successful feat, to the delights and mysteries of the masquerade; not, however, until he has 'fought his battle o'er again,' and invited his friends to be present at the surrender on the following morning, which he advises them that he intends to compel by force, if necessary.

"The masquerade opens. 'Fair women and brave men' are there, and—

"Music ascends with its voluptuous swell,
And eyes look love to eyes that speak again;
And all goes merry as a marriage bell."

"The Adjutant himself is there. The epaulette has modestly retired behind the domino. The gentleman from Tennessee at least will excuse me, if after his own example, I borrow from the celestial armory, on which he draws so copiously, a little of that *light* artillery, with which he blazes along his track, like a November midnight sky with all its flaming asteroids. The Adjutant, I repeat, is there.

"Grim-visaged war hath smoothed his wrinkled front,
And now, instead of mounting barbed steeds
To fright the souls of fearful adversaries,
He capers nimbly in a lady's chamber
To the lascivious pleasing of a lute."

"But lo! a hand is laid upon his shoulder, which startles him in the midst of the festivities, like the summons to 'Brunswick's fated chieftain' at the ball in Brussels, on the night before the battle in which he fell. It is the messenger of the Senate, who comes to warn him that his enterprise is an unlawful one. On the following morning he is waited upon again by another officer, with a warrant for his arrest for threats which looked to a disturbance of the peace. This double warning chills his martial ardor. Visions of impending trouble pass before his eyes. He sees, or thinks he sees, the return of civil strife, the floors of the Department dabbled, perhaps, like those of the royal palace at Holyrood, with red spots of blood. But, above all, he feels that the hand of the law-maker and of the law itself, which is stronger than the sword, is on him, and he puts up his weapon, and repairs, in peaceful guise, to take possession of his conquest. I do not propose, however, to describe the interview which followed. That will be the task of the future dramatist. It will be sufficient for us to accompany him back to the White House, where he receives the order to 'Go on and take possession,' which he was so unhappily called back to contradict, and which it was then well understood, of course, that he could not obtain except by force; and he continues to be recognized as Secretary of War, without a portfolio or a *cure*, while he waits under the direction of the President, not upon the law, but only to see, like Micawber, what may turn up here, and to be inducted and installed in proper form, as soon as your previous decision shall have been reversed, and his title affirmed, by your votes in favor of an acquittal. The idea of a suit, in which direction no single step was ever taken, is now abandoned, if it was ever seriously entertained.

"The conversation, however, with General Sherman, who was called as a witness by the President himself, settles the fact conclusively, if not already demonstrated by all the attendant circumstances, that it was not his purpose at any time to bring the case into the courts for adjudication. He preferred the dexterous finesse, or the strong hand, to a reference which every sensible lawyer would have told him could be attended with only one result, and that a judgment in favor of the law.

"But in this great strait, instead of a resort to the Attorney General himself, his special counsel Cox, employed only after the arrest of Thomas, is called to prove that he advised against the writ of *quo warranto*, because of 'the law's delay,' and endeavored to seek a remedy more summary through a *habeas corpus*, in the event of the commitment of the Secretary *ad interim*. Supposing it all true, however, the movement came too late to help his employer's case, by showing a desire to put the issue in the way of a judicial decision upon the law. Nor is it clear by any means that such a process could have achieved the desired results. With a warrant good upon its face, and charging a threatened disturbance of the peace, or an offense against a statute of the United States, I doubt whether any court would venture to declare the warrant void, or to discharge upon such a hearing, on the footing of the unconstitutionality of the law, which had received nearly three fourths of the votes of both Houses, or, indeed, of any law whatever; while I do not see how even a decision against it, could have had either the effect of ousting Stanton or putting Thomas in his place. It is enough, however, for the present purpose that the prisoner was discharged on the motion of his own attorney.

"The counsel for the President admits that he cannot in ordinary cases erect himself into a judicial tribunal, and decide that a law is unconstitutional, because the effect would be that there could never be any judicial decision upon it; but insists, as already stated, that where a particular law has cut off a power confided to him by the Constitution, he alone has the power to raise the question for the courts, and there is no objection to his doing it; and instances the cases of a law to prevent the making of a treaty, or one to declare that he shall not exercise the functions of Commander-in-Chief.

"It has been already very fully answered that there is no evidence here to show that there was any honest purpose whatever to bring this case into the courts, but that, on the contrary, there is very conclusive testimony to prove that he intended to keep it out of them. But had he a right to hold this law a nullity until it was affirmed by another tribunal, whether

it was constitutional or not? The Constitution gives to him the power of passing upon the acts of the two Houses, by returning a bill with his objections thereto, but if it is afterwards enacted by two thirds of both it is provided that 'it shall become a law.' What is a law? It is a rule of civil conduct prescribed by the supreme power of a State. Is there any higher power than the Legislature? Is it essential to the operation of a law that it should have the approval of the judiciary, as well as of the President? It is as obligatory on the President as upon the humblest citizen. Nay, it is, if possible, more so. He is its minister. The Constitution requires that he shall take care that it be faithfully executed. It is for others to controvert it, if aggrieved, in a legal way, but not for him. If they do, however, it is at their peril, as it would be at his, even in the cases put, where it is asked, with great emphasis, whether he would be bound to obey? Those cases are extreme ones. But if hard cases are said to make bad precedents, it may be equally remarked that extreme cases make bad illustrations. They are, moreover, of express powers, as this is not. But it will be time enough to answer them when they arise. It is not a supposable contingency, that two thirds of both Houses of Congress will flatly violate their oaths in a clear case. Thus far in their history, they have passed no law, I believe, that has been adjudged invalid. Whenever they shall be prepared to do what is now supposed, constitutions will be useless, faith will have perished among men, and limited representative government become impossible. When it comes to this, we shall have revolution, with bloody conflicts in our streets, with a Congress legislating behind bayonets, and that anarchy prevailing everywhere, which is already foreshadowed by the aspect of a Department of this great Government beleaguered by the minions of despotism, with its head a prisoner, and armed sentinels pacing before its doors. Who shall say that the President shall be permitted to disobey even a doubtful law, in the assertion of a power that is only implied? If he may, why not also set aside the obnoxious section of the appropriation bill, upon which he has endeavored unsuccessfully to debauch the officers of the Army by teaching them insubordination to the law? Why not openly disregard your reconstruction acts, as he will assuredly do, if you shall teach him by your verdict here that he can do it with impunity? The legal rule is that the presumption is in every case in favor of the law, and that is a *violent* one, where none has ever been reversed. The President claims that this presumption shall not stand as against him. If it may not here, it cannot elsewhere. To allow this revolutionary preten-

sion, is to dethrone the law and substitute his will. To say that he may hold his office, and disregard the law, is to proclaim either anarchy or despotism. It is but a short step from one extreme to the other. To be without law, and to leave the law dependent on a single will, are in effect but one and the same thing. The man who can declare what is law, and what is not, is already the absolute master of the State.

"But who is to try this case? The President insists that it belongs to the jurisdiction of the Supreme Court, where, as he untruly says, he endeavored to carry it. So it would, if the question involved were one of merely private right. But in his eccentric efforts to get into one court, by turning his back upon it, he has stumbled very unexpectedly into another. It is not the one he sought, but it is the one the Constitution has provided for just such delinquencies as his, and he cannot decline its cognizance. I beg pardon. He has sent you word, through the special counsel whom he sends here with his personal protest, that he might have declined it, on the opinion still entertained by both of them, that this is no Congress, and you are no court of competent jurisdiction to bring before you and try a President of the United States, by the logic of which argument he proves equally, of course, that he is no President. To avoid a bloody conflict, however, although he has been tendered the necessary aid in men, and inasmuch, I suppose, as you have been so indulgent as not to put him to the humiliation of appearing in person at your bar, he waives his sufficient plea to the jurisdiction, and condescends, only out of the abundance of his grace, and in a spirit of forbearance, for which he claims due credit at your hands, to make answer before a tribunal which he might rightfully have defied.

"But he is here now by attorney, in what his other counsel have taken great pains to prove to you to be a court indeed, although they insist, not very consistently, in almost the same breath, that it has only the functions of a jury. I shall not dispute that question with them. I am willing to agree that the Senate, *pro hac vice*, is a court, and that, too, of exclusive jurisdiction over the subject-matter in dispute, from which it follows by a necessary logic, as I think, that it is fully competent to try and decide the whole case for itself, taking such advice as it thinks proper as to the law, and then rejecting it if it is not satisfactory. If it cannot do this, it is but the shadow and mockery of what the defendant's counsel claim it to be in force and fact. But by what name soever it may be called, it will solve for the President the problem which he has desired to carry into another tribunal, without waiting for any

extraneous opinion. It has already determined upon the constitutionality of the tenure-of-office law, by enacting it over his objections, as it has already passed upon its meaning, by its condemnation of the act for which he is now to answer at its bar. It will say, too, if I mistake not, that whether constitutional or not, it will allow no executive officer, and much less the Chief Magistrate of the nation, to assume that it is not so, and set up his own opinion in its place, until its previous and well-considered judgment upon the same opinion has been judicially affirmed.

"But does it make any difference whether Mr. Stanton's case is within the tenure-of-office act or not. Had the Executive the power at any time, either during the session or the recess, to create a vacancy to be filled up by an appointment *ad interim*, to continue during his own pleasure; or if he had, could he prolong a vacancy so created beyond the period of six months?

"The Constitution provides—and it required such a provision, in view of the general clause which associates the Senate with the President, and makes their advice and consent necessary in all cases of appointment to authorize it—that he shall have power to fill up all vacancies happening during the recess, by temporary commissions to expire at the end of the next session; and by a necessary implication of course he cannot do it in the same way, or without their advice and consent while the Senate is at hand to afford it. The word *happen*, as used here, imports accident or casualty only, according to the best authorities. If this is the correct interpretation he cannot, of course, create a vacancy for that purpose during the recess, under the Constitution, although he may claim to do so under the law establishing the Department, which places the power of removal in his hands. If he does, however, the case then falls within the constitutional provision, and the vacancy thus created must be filled by a commission to expire at the end of the next session.

"He did create a vacancy in this case by the suspension during the recess, which he proceeded to supply by the appointment of General Grant as Secretary of War *ad interim* at his pleasure. And this he now defends, not under the provisions of the tenure-of-office law, which would have authorized it, but which he expressly repudiates, but upon the footing, in the first place, of his constitutional power.

"Nothing is clearer, however, than the proposition, that there was no authority to do this thing except what is to be found in the act which he repudiates. There are no laws and

no precedents, so far as I am advised, to justify or excuse it. If he may suspend indefinitely, and appoint at pleasure a Secretary *ad interim*, he may not only change the terms of the commission, but strip the Senate of all participation in the appointing power.

"But then he says, again, that he did this under the authority, also, of the act of 13th February, 1795, for filling temporary vacancies. The tenor of that act is, that in a case of vacancy it shall be lawful for the President, if he deem it necessary, to authorize any person or persons to perform the duties until a successor is appointed or such vacancy is filled: with the proviso, however, that no one vacancy shall be supplied in that manner for a longer term than six months; which proves, of course, that the exigency provided for was only to be a temporary one.

"We maintain that this act has been repealed by the more recent one of 13th February, 1863, which confines the choice of the President to the heads of the other Departments. It is insisted, however, that while the former covers all cases of vacancy, the latter is confined to some particular instances, not including those of removal, or such as may be brought about by efflux of time, and does not, therefore, operate as a repeal to that extent. Granting this, for the sake of the argument, to be true, how is it to apply to a vacancy occurring during the recess, without a repeal of the constitutional provision which is intended expressly for just such cases? Was it intended to supersede it, and is it to be so interpreted? This will hardly be pretended, if it were even clear that the Legislature had such a power. The intent and meaning of the act are so transparent from the context, from the words of tenure, and from the six months' limitation, that it is impossible to mistake them, or even to doubt, that it was designed for merely accidental and transient cases, that were left unprovided for in the Constitution. The President's claim would perpetuate the vacancy by enabling him to refuse to fill it, or to nominate a successor.

"If it be even true, however, that he might have appointed General Grant during the recess, under the law of 1795, it is equally clear that he could not continue him in office, or protract the vacancy beyond six months; and yet he insists, in his special plea in answer to the averment of the absence of the condition of vacancy on the 21st of February, when he appointed General Thomas—which was more than six months after the appointment of General Grant—that there was a continuing vacancy at that time; intending, of course, that the act of the Senate in refusing to approve his suspension, and his resump-

tion of the duties of the office, were to be treated as of no account whatever. From the premises of the President, that the civil-tenure act was invalid on constitutional grounds, and did not, at all events, embrace that case, his inference of a continuing vacancy is undeniable, and his appointment of General Thomas, therefore, entirely unauthorized by the act on which he relies.

"But there is more in this aspect of the case than the mere failure of the authority. Taking it that, although he might possibly remove during the recess, he could not suspend and appoint a Secretary *ad interim* except by virtue of the tenure-of-office law, and that it may be well pleaded in his defense, even though he may have insisted that he did not refer to, or follow, or recognize it, I think it cannot be a question among lawyers, that all the acts of a public officer are to be conclusively presumed to have been done under the law which authorized them. But then it will be said, as it has been in regard to the proof of changes made in the forms of commissions to make them harmonize with the now disputed law, and of other evidence of a kindred character, that this is only to set up the doctrine of estoppel, which, though not unreasonable, has been so often characterized as odious in the civil courts, against a defendant in a criminal proceeding.

"I am ready to admit that estoppels are odious, because they exclude the truth, but have never supposed that they were so, when their effect was only to shut out falsehood. It was not for this purpose, however, in my view at least, that such evidence was offered; but only to contradict the President's assertions by his acts, and to show that when he pleads through his counsel, that if the law was valid he honestly believed the contrary, and that if it embraced the case of Mr. Stanton he innocently mistook its meaning, and did not intend willfully to misconstrue it, he stated what was not true.

"And now, a few words only upon the general question of intent itself, which has been made to figure so largely in this cause, under the shadow of the multiplied averments in regard to it. I do not look upon those averments as at all material; and if not material, they are, as every lawyer knows, but mere surplusage which never vitiates, and it is never necessary to prove. I do not speak as a criminal lawyer, but there is no professional man, I think, who reads these charges, that will not detect in them something more, perhaps by way of abundant caution, than even the technical nicety of the criminal pleader. I do not know that even in the criminal courts, where an act is charged in clear violation of a law forbidding it, and

especially if it involve the case of a public officer, that it is any more necessary to allege that he violated the law, with the *intent* to violate it, than to aver that he was not ignorant of the law, which every man is bound to know. The law presumes the intent from the act itself, which is a necessary inference, if the law is to be observed and its infraction punished; and the party committing it, is responsible for all the consequences, whether he intended them or not. It makes no difference about the motive, for wherever a statute forbids the doing of a thing, the doing it willfully, although without any corrupt motive, is indictable. (2 Dwarria, 677; 4 Term Rep. 457.) So when the President is solemnly arraigned to answer here to the charge that he infringed the Constitution, or disobeyed the commands or violated any of the provisions of the tenure of office or any other law, he cannot plead either that he did it ignorantly or by mistake, because ignorance of the law excuses nobody, or that he did it only from the best of motives, and for the purpose of bringing the question of its efficacy, or his obligation to conform to it, to a legal test, even though he could prove the fact, as he has most signally failed to do in the case before you. The motives of men, which are hidden away in their own breasts, cannot generally be scrutinized, or taken into the account, where there is a violation of the law. An old Spanish proverb says, that there is a place—not to be named to ears polite—which is 'paved with good intentions.' If they, or even bad advice can be pleaded hereafter, in excuse for either neglect or violation of duty here, it will be something comfortable to die upon at least, and few tyrants will ever suffer for their crimes. If Andrew Johnson could plead, as he has actually done, in apology for his own dispensation with the test-oath law, or any other feature of his law-defying policy, that his only aim was to conciliate the rebels and facilitate the work of restoration, his great exemplar, whom he has so closely copied—the ill-advised and headstrong James II—might equally have pleaded that he did the very same thing in the interests of universal tolerance. The English monarch forfeited his throne, and disinherited his heirs upon that cast. It remains to be seen whether our king is to run out the parallel.

"I beg to say, however, in this connection, that I do not by any means admit, that a case like this is to be tried or judged by the rigid rules and narrow interpretations of the criminal courts. There is no question here of the life or liberty or property of the delinquent; it is a question only of official delinquency, involving, however, the life of a great State, and with

it the liberties of a great people. If the defendant is convicted, he forfeits only his official place, and is, perhaps, disqualified from taking upon himself any other, which will be no very severe infliction, I suppose, unless the rebels themselves should be so fortunate as to come once more into the possession of the Government, and so weak as to trust a man who had been untrue to those who had honored him so generously before. The accusers here are forty millions of freemen, the accused but one, who claims to be their master; the issue, whether he shall be allowed to defy their will, under the pretext that he can govern them more wisely than their Congress, and to take the sword, and, in effect, the purse of the nation into his own hands.

"On such an issue, and before such a tribunal, I should not have hesitated to stand upon the plain, unvarnished, untechnical narration of the facts, leaving the question as to their effect upon the interests of the nation, and their bearing upon the fitness of Andrew Johnson to hold the helm of this great State, to be decided by statesmen, instead of turning it over either to the quibbles of the lawyer, or the subtleties of the casuist. I have no patience for the disquisitions of the special pleader in a case like this. I take a broader view, one that, I think, is fully sustained by the authorities, and that is, that in cases such as this, the safety of the people, which is the supreme law, is the true rule, and the only rule that ought to govern. I do not propose to reargue that question now, because it seems to me something very like a self-evident proposition. If Andrew Johnson, in the performance of the duties of his high office, has so demeaned himself as to show that he is no respecter of the laws; that he defies the will of those who make them; and has encouraged disobedience to their behests; that he has fostered disaffection and discontent throughout the lately revolting States; that he is a standing obstacle to the restoration of the peace and tranquillity of this nation; that he claims and asserts the power of a dictator, by holding one of your great departments in abeyance, and arrogating to himself the absolute and uncontrollable right to remove, or suspend at his mere will, every executive officer of the Government, on the land and on the seas, and to supply their places without your agency, if, for any or all of these reasons, the Republic is no longer safe in his hands; then before heaven and earth, as the conservators of the nation's weal, as the trusted guardians of its most invaluable rights, as the depositaries of the most sacred and exalted trust that has ever been placed in the hands of man, it becomes your high and solemn and imperious duty, to see that the Republic shall take no detriment, and to speak peace to a dis-

turbed and suffering land, by removing him from the trust he has abused, and the office that he has disgraced.

"There are other points in this case on which I would have desired to comment if time and strength had been allowed to me for that purpose. It is only within the last few days that I have entertained the hope that the Senate would so far relax its rule as to enable me to obtain what, under the circumstances, is at best but an imperfect hearing, and I have felt it necessary, therefore, to confine myself to the leading arguments connected with the removal of the Secretary of War. I wish it to be understood, however, that I do not underrate the value of such of the articles as I have been obliged to pretermit. There is nothing in the whole case, I think, of graver import to the nation than the means adopted by the President for overthrowing the legislative power by fostering disobedience to its enactments and bringing its accepted organ into disrepute.

"To this charge there are three answers. The first is the supposed constitutional right to the use of an unbridled tongue, which knows no difference between licentiousness and liberty. The second is the provocation supposed to have been offered in the language used by members of Congress in debate, in what seems to be forgotten to be their constitutional right, which not only protects them from challenge anywhere, but gives to them the right freely to criticise the public conduct of the President, over whom the law has placed them, by making him amenable to them for all his errors, as they are not to him. The third is the harmless jest, in the suggestion of a law to regulate the speech and manners of the President. If his counsel can find food for mirth in such a picture as the evidence has shown, I have no quarrel with their taste. The President may enjoy the joke, perhaps, himself. I do not think he can afford it, but history informs us that Nero fiddled while Rome was burning. Whether he does or not, however, I trust that he will find a *censor morum* here as stern as Cato, in the judicial opinion of this body, that the man who so outrages public decency, either in his public or private character, in the pursuit of an object so treasonable as his, has demonstrated his unfitness longer to hold the high place of a Chief Magistrate of a free, intelligent, and moral people. I take leave of this unpalatable theme by remarking only that even the advocate of the people must feel, as a child of the Republic himself, while he is compelled to say thus much, that he would rather have turned his back, if it had been possible, on such a spectacle, and thrown a mantle over the nakedness that shames us all.

"And now, American Senators, Representatives, and judges upon this mighty issue—joint heirs yourselves of that great inheritance of liberty that has descended to us all, and has just been ransomed and repurchased by a second baptism of blood—a few words more, and I have done.

"If the responsibilities of the lawyer are such as to oppress him with their weight how immeasurably greater are your own! The House of Representatives has done its duty. The rest is now with you. While I have a trust in that God who went before our hosts, as He did before the armies of Israel, through the fiery trials that led so many of the flower of our youth to distant graves on southern battle-fields, which has never failed me in the darkest hour of the nation's agony, I cannot but realize that He has placed the destinies of this nation in your hands. Your decision here will either fall upon the public heart like a genial sunbeam, or fling a disastrous twilight, full of the gloomiest portents of coming evil, over the land. Say not that I exaggerate the issue or overcolor the picture. This, if it were true, would be but an error of much smaller consequence than the perilous mistake of underrating its importance. It is, indeed, but the catastrophe of the great drama which began three years ago with murder—the denouement of the mortal struggle between the power that makes the law and that which executes it—between the people themselves, and the chief of their own servants, who now undertakes to defy their will. What is your verdict to decide? Go to the evidence, to the plea of the President himself, and to the defiant answer that he sends by his Tennessee counsel, and they will give you the true measure of the interests involved. It is not a question only whether or not Andrew Johnson is to be allowed to serve as President of the United States for the remainder of his term. It is the greater question whether you shall hold so long yourselves the power that the Constitution gives you by surrendering the higher one to him of suspending, dismissing, and appointing at his will and pleasure every executive officer in the Government from the highest to the lowest without your consent, and if possible the still higher one of disregarding your laws for the purpose of putting those laws on trial before they can be recognized. He has made this issue with you voluntarily and defiantly. If you acquit him upon it, you affirm all his imperial pretensions, and decide that no amount of usurpation will ever bring a Chief Magistrate to justice, because you will have laid down at his feet your own high dignity, along with your double function of legislators and advisers, which will be followed of course by that of your other, I will not say greater,

office as judges. It will be a victory over you and us which will stir the heart of rebeldom with joy, while your dead soldiers will turn uneasily in their graves; a victory to be celebrated by the exultant ascent of Andrew Johnson to the Capitol, like the conqueror in a Roman triumph, dragging not captive kings, but a captive Senate at his chariot wheels, and to be crowned by his re-entry into the possession of that Department of the Government over which this great battle has been fought. It is shown in evidence that he has already intimated that he would wait on your action here for that purpose. But is this all? Hug not to your bosoms, I entreat you, the fond illusion that it is all to end there. It is but the beginning of the end. If his pretensions are sustained, the next head that will fall as a propitiatory offering to the conquered South, will be that of the great chief who humbled the pride of the chivalry by beating down its serried battalions in the field, and dragging its traitor standard in the dust; to be followed by the return of the rebel officeholders, and a general convulsion of the State which shall cast loose your reconstruction laws, and deliver over the whole theater of past disturbances to anarchy and ruin. Is this an exaggerated picture? Look to the history of the past and judge.

"And, now, let me ask you, in conclusion, to turn your eyes but for a moment to the other side of the question, and see what are to be the consequences of a conviction—of such a verdict as, I think, the loyal people of this nation, with one united voice, demand at your hands. Do you shrink from the consequences? Are your minds disturbed by visions of impending trouble? The nation has already, within a few short years, been called to mourn the loss of a great Chief Magistrate, through the bloody catastrophe by which a rebel hand has been, unfortunately, enabled to lift this man into his place, and the jar has not been felt as the mighty machine of State, freighted with all the hopes of humanity, moved onward in its high career. This nation is too great to be affected seriously by the loss of any one man. Are your hearts softened by the touching appeals of the defendant's counsel, who say to you that you are asked to punish this man only for his divine mercy, his exalted charity to others? Mercy to whom? To the murdered Dostie and his fellows? To the loyal men whose carcasses were piled in carts like those of swine, with the gore dripping from the wheels, in that holocaust of blood, that carnival of murder which was enacted in New Orleans? To those who perished in that second St. Bartholomew at Memphis, where the streets were reddened with the lurid light of burning dwellings, and the loyal occu-

pants, who would have escaped, were cast back into the flames? The divine mercy itself is seasoned by justice, and waits only on contrition. This is no place for such emotions. If it be, it is mercy to loyalty and innocence, that cries aloud for the removal of this bold, bad man. If it be, remember, that while your loyal brethren are falling from day to day in southern cities by the assassin's knife, and the reports of the Freedmen's Bureau are replete with horrors at which the very cheek turns pale, your judgment here stains no scaffold with the blood of the victim. No lictor waits at your doors to execute your stern decree. It is but the crown that falls, while none but the historian stands by to gibbet the delinquent for the ages that are to come. No wail of woe will disturb your slumbers, unless it comes up from the disaffected and disappointed South, which will have lost the foremost of its friends. Your act will be a spectacle and an example to the nations, that will eclipse even the triumph of your arms, in the vindication of the public justice in the sublimer and more peaceful triumph of the law. The eyes of an expectant people are upon you. You have but to do your duty, and the patriot will realize that the good genius of the nation, the angel of our deliverance, is still about us and around us, as in the darkest hour of the nation's trial."

The address was listened to with the closest attention, and at its close, amid all the congratulations showered upon him, none were more cordial and sincere than those from his chief opponent, William M. Evarts of New York. The *Philadelphia Press*, in reprinting it the next day, said, editorially: "Mr. Williams has long been recognized as one of the leading lawyers of the House, and this reputation has been fully sustained. His argument is rigidly analytical, and seems to be a compend of crushing truths rather than an elaborate discourse. A single axiom of law, a line from a decision, a clause from the Constitution, is often made to turn into vapor an extended argument of the defense, by a simple antithesis. There are no points of the speech stronger or more convincing than when he takes hold of the positions of the President, and argues directly from them, thus showing their fallacy by the principle of *reductio ad absurdum*. The avalanche of precedents and interpretations that he rolls down upon the illogical mole-hills of the defense crushes them into fragments. His peroration is beautiful, rising, as it does, into a sublimity that rivals the masterly efforts of our

greatest orators." In quoting from it the *Pittsburgh Daily Commercial* said: "The argument of Manager Williams, in breadth, compactness and eloquence is surpassed by no effort of the occasion." The Washington correspondent of the *Cincinnati Gazette*, writing just after Mr. Bingham's opening address, admits that Mr. Williams "is probably the best legal scholar on the board of managers," but adds, "it is undeniable that the weight of legal reputation is against the managers, and in favor of the President's counsel. No lawyer in the United States can be named, with the approval of the profession, before Judge Curtis of Boston. Wm. M. Evarts ranks with Chas. O'Connor, James T. Brady and David Dudley Field, the four being held by common consent, the foremost lawyers of New York. Intense, and in some sense just as are the prejudices against Jer. Black, we cannot, in fairness, deny that he stands with the foremost, if not himself, the foremost, in Pennsylvania. Of Henry Stanberry's legal reputation, no Ohioan, most of all no Cincinnati, needs to be informed. There are no men among the managers—there are no men even in the court—that can be compared with these four for reputation as great lawyers before the country." Another Washington correspondent—namely, of the *New York Times*—writing on May 2d, naturally thinks Mr. Evarts' speech the one most prominent, as many others did. "But," said he, "those who desire to read all that is truly interesting and truly valuable in this trial, should not omit a careful perusal of the speech of Manager Williams. It was probably prepared with more care than any other that has been delivered, and while it abounds in strong legal positions, it also abounds more in the literature of the law than any other. Owing to an unpleasant voice, Mr. Williams' delivery really detracted from the merit of his speech; but it will stand the test of the highest criticism, as a literary as well as a legal production. * * * By the time Mr. Bingham concludes, the country will be convinced that the degeneracy of our orators is not so great as has been supposed." And nearly thirty-five years later, referring to this event, Congressman John Dalzell, in a public address, exclaimed:

"Grand old Thomas Williams! Allegheny County never had an abler or a more faithful representative in the National Congress. He was one of the committee from the House of Representatives to prosecute on its part President Johnson in the impeachment proceedings against him, and, in my judgment, his argument was the ablest of all made on his side of the case in that remarkable trial."¹

On Saturday, May 16th (1868), a test vote was made on Article XI, which really contained nearly the substance of the whole charge against the President. There were 54 Senators voting, and the result was a majority of 16 in favor of impeachment, i. e., 35 to 19.² To secure impeachment, however, on this article required 36, i. e., a two-thirds vote of the Senate. Therefore, although the Senate was overwhelmingly in favor of impeachment, it lacked just one vote of the required two-thirds. And who were some of the Senators who voted for impeachment? Conkling, Cameron, Edmunds, Ferry, Chandler, Freylinghuysen, Harlan, Morgan, the Morrills, Morton, Sherman, Sumner and men of that class. "Upon this review of the law and the testimony," said Senator John Sherman, in his filed opinion, "I find that the President is guilty of a high misdemeanor as charged in the first article of impeachment.—It is a necessary result of this opinion that I also find him guilty of high misdemeanors as charged in the second, third, eighth and eleventh articles of impeachment."³ This vote made further action unnecessary, and on May 26th the Court of Impeachment adjourned. Andrew Johnson was not impeached, but the nature of the verdict made it plain that Congress had won a moral victory in their contention that, with the fall of the Confederate armies, the re-formation of the wrecked States was the business of the legislative and not the executive branch of government.

At this distance of time, surely the younger generation, at least, should be able to preserve the historical attitude in viewing that great contest; and does that atti-

¹ Address at Carnegie Music Hall, Pittsburgh, on May 23, 1902.

² Supplement to *Congressional Globe*, "Trial of the President," 2d Session, Fortieth Congress, p. 472.

³ *Id.*, p. 452.

tude consist altogether in speculating on what might have been? Who knows what might have been? Is it important what might have been, even if it could be known? The fact remains that there was a great military conflict, covering four years, before one of the contending hosts was exhausted; that there was another great conflict, this time civil, covering at least an equal period—and both conflicts were, in their ultimate aim, practically the same—namely, preserving the Constitution and liberty under it for a great mass of human beings, and arose from various causes; for probably no one would deny that however President Lincoln might hold before himself the single aim of preserving the Constitution, *with* or *without* slavery, his armies were in the first instance and his people in the second instance, through their representatives, fighting for the Constitution *without* slavery alone. "Without slavery," to the victorious side, came to mean also "with suffrage;" although why it should have, in this particular instance, when it did not mean so for the Indian, nor for that highly intelligent half of population—women, might not be clear to the observer, unless he recalled that Indians were considered a savage people, and the "rights" of women had not found its place in the civilized consciousness as had the rights of man.¹ The negro was considered a man of peace, accustomed to our form of civilization; ergo, fit for suffrage, because the great mass of the northern States had practically unqualified manhood suffrage at that time. If the element especially peculiar to the negro situation then, if not now, namely, the vast relative proportions and ignorance of the newly liberated race, gained entrance into the northern consciousness and made them hesitate as to the applicability of universal manhood suffrage then, the course of some of the South in the forced-labor laws, the alarms raised by the contest and the fall of Lincoln drove it out. The result was conflict—war, *civil* war, in a very true sense. Let it be admitted that Johnson was following Lincoln's one-

¹ The "savagery" of the Indian was no doubt due in part to his objection to being dispossessed of his country by a foreign civilized race who wanted to cultivate it—but, however that may be, the conflict of ideas and civilizations is an established fact of history.

time proposed plans, had not Lincoln changed his plans more than once at the demands of the Northern people? And, in the temper of the Northern people at that time, is there any doubt he would have been compelled to, if he had not anticipated, change them again? The dominant half of the American people, whose political life had been so long scourged by the negro question, were undoubtedly determined to settle it once for all, if that were possible. Whether they used greater wisdom in the operation than did the southern people or than would a generation who did not have the responsibility, is a speculative question that could only be settled by allowing either one to experiment with the same problem. The first half of the great War of the Sixties was a war of military forces, the second half a conflict of ideas—and the latter is always attended with the greater bitterness—and were not the problems of those on both sides, in this second half, immeasurably greater and more delicate, in some respects, than those in the first? That they were, one can instantly see by merely recalling that the questions of the first were physical ones and were settled; and also by merely intimating that no small element, either North or South, count the problems of the second half settled, even yet; and the efforts of the South to abide by the Constitution and still eliminate the mass of ignorant vote, and the ill-concealed resentment in the rest of the country at the existence of unequal representation, abundantly testify to it. And when a whole generation has been unable to settle a question, would it not well become that generation to glow with warmest appreciation of the courageous statesmen who attacked the problem and did their part toward its solution at its most critical period? Will any historian say other than that it is idle to treat the impeachment alone and separate from the great problems of which it was a mere part—mere incident in what was essentially *civil* war? Mr. Williams and his colleagues so looked upon it. They undoubtedly represented the majority of the American people at the time, both as to what was proposed and, perhaps, as to the limitations of American knowledge as to the operation of a great mass of ignorant suffrage. That

their aims were in line, however, with the best thought and general conviction of the American people, if not, indeed, of the world itself, is it possible for one, with a truly historical spirit, to doubt? He now again held one of those permanent principles which are not of hasty fruitage—that require time for maturity and realization.

After a leave of absence, beginning May 29th, and due to the condition of his health before mentioned, he returned, and on July 7th, on his own initiative, presented additional articles of impeachment. "Although agreeing that the case presented to the Senate, made up as it was of facts that were not open to dispute, was so entirely adequate as to have insured a conviction before any bench of judges learned in the law, it did not strike me as wise to leave the impeachment of the House against so high an officer, with all the power and all the prestige of his place, to rest before a tribunal, compounded of such heterogeneous elements, upon any questions of law that afforded so large a scope for the ingenuity of professional men, when there was, as I think, another case in reserve, in which the offense was at least equally heinous, and the facts equally unquestionable, and where the law was so transparent that no false logic could darken counsel, or run away with the understanding of the judge, and no man, whether lawyer or layman, could frame an apology for mistake. If it was important to this nation to convict and remove a President who is admitted even by his apologists in the Senate to be utterly unfit for the high place which he occupies, it was equally important that no material part of his manifold offenses should be overlooked." The articles all had to do with the usurpation of power over various kinds of southern property, which, it was contended, should be only in the power of Congress to dispose of, and other infractions of the law as contended by Congress: "Usurpation of power in every possible form that tyranny could have invented or imagined. Usurpation in legislating without the consent of Congress for the erection of governments by proclamation, and claiming for those proclamations the force of law; usurpation in raising moneys to a vast amount, without the consent of Congress, for the purpose of maintaining

those governments by the appropriation of the public property and the exercise of the taxing power; usurpation in creating offices unknown to the law, and filling them with the enemies of the government, and paying those enemies out of appropriations made by law for other purposes; usurpation in returning millions of captured property belonging to the Government to the original proprietors, without the consent or even the knowledge of Congress, and without any consideration whatever; usurpation and fraud in transferring, by a pretended private sale to the same individuals, other millions of Government property on long terms of credit and without security, and then postponing the payment for the purpose of securing his own private debt; usurpation in refunding to rebels large sums of money arising from sales of captured and abandoned property directed by law to be paid into the Treasury; usurpation in misusing and abusing the pardoning power to purchase the co-operation of the leading rebels in his unlawful plans of reconstruction; usurpation in not only refusing to enforce the laws enacted to put down the rebellion, but absolutely preventing their execution by arresting the process of the courts, and turning public malefactors loose without even a pardon; usurpation in the abuse of the appointing power by the removal of meritorious officers, and filling their places, without the consent of the Senate, with his own minions in aid of his unlawful purpose of maintaining his own governments and forcing them into the Union against the will of the loyal people; and to crown all, usurpation the most insolent and high-handed in the exercise of a dispensing power over the laws enacted to carry out the policy of Congress, by appointing rebels to office in open defiance thereof, and substituting his own will for that of the law-maker himself!" He said he did not intend to say that the friends of various candidates had feared the temporary elevation of Mr. Wade; "it would not be, perhaps, considered exactly parliamentary." He said it was not too late, for he claimed that the cause was still depending on an indefinite adjournment. "If it were the last day of that term," and here one may see the propagandist in the advocate, "the example alone



BENJAMIN FRANKLIN WADE

Of Ohio, who, as President of the Senate, would have succeeded Andrew Johnson had the impeachment been successful. Halftone of a contemporary photograph by Brady, negative in possession of L. C. Handy, Washington, D. C.

would be of inestimable value to the nation, in the mere vindication of public justice, and the admonition it will furnish to those who are to come after him." He finished by saying: "My duty is thus performed. I leave the case with this house and Providence."¹

The Republicans had nominated General Grant and declared for the reconstruction policy; the Fourteenth Amendment was declared in force during this month of July, and, Mr. Williams' health growing constantly worse, he was granted indefinite leave of absence on account of it on July 22d, three days before Congress adjourned.² That condition made it necessary for a further leave of absence on December 16th, after the assembling of the third session, and although he was present occasionally, and was present on the last day of the session, March 3d (1869), his work in Congress had practically come to a close during the previous session. With the close of the Fortieth Congress, Mr. Williams retired from official life, and even gave up a large share of his professional activities. The policies for which he stood while in Congress had again been upheld by the people, and the inauguration of General Grant removed the difficulties due to the conflicts with the policy of his predecessor, Andrew Johnson of Tennessee.³

¹ *Congressional Globe*, Part 5 and appendix, 2d Session, Fortieth Congress, p. 418.

² In Boutwell's "Reminiscences of Sixty Years in Public Affairs," Vol. II, p. 41, he says the Fourteenth Amendment was prepared by Conkling, Williams and himself.

³ Many of his friends pressed his name for a foreign mission at some European capital late in 1869, and he was even mentioned for the Court of St. James, but the condition of his health no doubt prevented aggressive effort. Letters among the Williams papers.

Letters of Judge Buffington, who was chairman of the Republican Executive Committee in 1868, show that they greatly desired Mr. Williams to continue in Congress. Other letters also show that some opponents of the impeachment sought to prevent Mr. Williams' candidacy again.

CHAPTER XIX

CLOSING YEARS

1869-72

With the summer days of 1869, Mr. Williams had reached the age of three-score-and-three years, and whether his recent illnesses and that always threatening organ, his heart, warned him that the years of greater leisure had arrived, or whether his well-known inclination to the joys of the study and the library led him to deliberately choose these closing years chiefly for that lofty reflection and research for which this ripe period is so truly fitting, cannot be known. That these three remaining years were thus increasingly occupied, however, with only an occasional public utterance, either by pen or voice, on vital questions of the hour in which he took so much interest, and with only an occasional appearance at the bar, even down to his final farewell to it in the Huidekoper case, is well known to all who were accustomed to the sight of his venerable figure upon the streets of Pittsburgh, or his beloved Allegheny City, which was his home in these closing years.¹ It is significant that the most notable instance of emergence from this retirement was his long account of the municipal railway contest, heretofore noticed, which appeared almost exactly a year before his death.²

The end came after a short illness from neuralgia of the heart on Thursday morning, June 6, 1872, in his

¹ No. 11 Stockton avenue, Allegheny, was his home at this time. It is interesting to note, in a letter of November 26, 1871, from Mr. Williams while visiting William Axon Stokes, at Philadelphia, that he seriously considered making his home in the latter city. It is also characteristic of his love for Cicero that for some years before he went to Congress he was working out his plans for a country seat at Hazelwood, to be known as "Tusculum," the seat of the great Latin orator's villa, "Tusculanum." He never completed more than the lodge at the gateway, however.

² The *Pittsburgh Commercial* of September 7, 1871, which is given entire at p. 375.

sixty-sixth year.¹ That evening the *Chronicle* said: "Thus another of the splendid list of names which gave the bar of Pittsburgh such a wide reputation in the last thirty years, and which included such distinguished men as Walter Forward, Samuel Black, Edwin M. Stanton, and William Wilkins, is gone from among us, a towering land-mark in the history of our city, and a beacon light to the emulous young lawyers of generations to come." The next morning the *Gazette* said, with great warmth of feeling: "This man of deep and varied learning, of great professional eminence, distinguished in the Councils of the State and of the United States, whose speeches in Congress during and since the war were spoken of by Senators, Representatives and Judges, as Websterian in diction, power and statesmanship; this man of almost matchless intellect, of incorruptible integrity, faithful to all trusts whether of client or constitution, is no more." The *Dispatch*, in a sketch appearing at the same time, voiced the following—to quote a single paragraph: "Mr. Williams served two sessions in Congress, and while there obtained national distinction as one of the prosecutors of President Johnson during the impeachment trial. His speech on that occasion was a remarkable effort, and though characterized by many of its critics as turgid and ineffective, was nevertheless a production distinguished by masterly language and argumentative vigor. Deceased was a man learned in literature. He was a fine linguist, a great reader, a ready and elegant writer. Few men leave such extensive or judiciously

¹ Mrs. Williams and the following children survived him, her death occurring in Philadelphia, March 9, 1887: Major Thomas, Jr., Alexander Reynolds, Margaret Donaldson, Agnes (Pemberton), Sarah D., Mary and Captain Richard Algernon. Major Thomas Williams, who died November 11, 1884, was a graduate of Miami University at Oxford, Ohio, and was admitted to the bar. At the opening of the war he was made First Lieutenant of the Fifth United States Artillery and assigned to the staff of General McDowell. He was promoted Captain and at the battle of Bull Run he was brevetted Major for gallant conduct. Captain Richard A. Williams, who died in New York, January 19, 1890, was a West Point graduate in the Eighth United States Cavalry. He won his promotion in the Indian campaigns. Mrs. Pemberton, whose death occurred January 25, 1900, was the wife of Henry Pemberton, a distinguished chemist of Philadelphia, member of the American Philosophical Society and author of "The Path of Evolution Through Ancient Thought and Modern Science" (1903). Mr. Pemberton is a brother of the late Confederate General John C. Pemberton. The surviving children of Mr. and Mrs. Pemberton, Mrs. Quincy A. Shaw, Jr., who is the wife of a grandson of the late distinguished scientist, Louis Agassiz, and Dr. Ralph Pemberton, together with Miss Virginia S., daughter of Alexander R. Williams, are the only remaining grandchildren of Mr. Williams.

selected libraries as that which is numbered among the assets of deceased. He delighted in books of travel, but abhorred novels, or fiction in any form.¹ Mr. Williams' last professional engagement was as counsel in the Stitt-Huidekoper case, less than a year ago before the United States Circuit Court. To the last he was identified more or less with politics, being one of the candidates before the late Republican Convention for delegate to the Constitutional Convention, in which contest he was defeated—to the end that party drummers with no knowledge of law or pretensions to it, be provided with a place. Though the course of deceased was betimes at variance with public opinion, and not infrequently adverse to the public interests [as the *Dispatch* writer, who was evidently a writer of briefs also, no doubt believed] he was recognized as an able man, and his death will be sincerely regretted."

The courts had all adjourned out of respect, and on the same day (Friday) all the leading members of the legal profession had a meeting, presided over by Hon. Moses Hampton, with Hon. James P. Sterrett, Hon. E. H. Stowe, Hon. F. H. Collier, Hon. John W. Kirkpatrick, James I. Kuhn, Robert Woods, Thomas MacConnell and B. M. Smith as vice-presidents. Mr. Kuhn, who had once been a partner of Mr. Williams, officially announced his death, and "gave a short but graphic sketch of his life, his career as a lawyer and services as a public man.² He referred to his extensive and varied learning; rating him not only as a leading lawyer, just and upright in the discharge of his duties, but a scholar of profound learning—well versed in polite literature, an accomplished Latin, Greek and French linguist. He paid a glowing tribute to his purity of life, kindness of heart, and zeal in the pur-

¹ Mr. Williams' love for history is indicated in some degree by the fact that his library contained about 400 volumes on that subject alone. It is also suggestive to know that there were over 200 volumes on voyages and travels, nearly the same on religion and theology, while it might readily be surmised that he would have above 100 on poetry and the drama and a like number on rhetoric and belles lettres, or nearly that number on ethics and politics, which he classes together. The possession of about 200 volumes of the best fiction, wit and humor would not indicate that he "abhorred" fiction in any form hardly. The number of volumes do not, however, make the impression on one that their high character do, of course, and the really significant fact about it all is that he made great books his companions.

² In the November number of the *New Jersey Law Journal*, 1904, p. 351, a sketch of General Samuel D. Oliphant of Trenton, 1824-1904, states that he also was at one time a partner of Mr. Williams.

THE MEMORIAL

THE PITTSBURGH BAR.

For Thomas Williams.

RESOLUTIONS

Resolved

In a Warrant
to the
Bar

of

John M. Williams

RESOLUTIONS OF THE PITTSBURGH BAR

Half-tone of original in possession of the Misses Williams, Philadelphia

suit of his profession. In conclusion he moved that a committee on resolutions be appointed."¹ Those chosen were John H. Hampton, Thomas M. Marshall, M. W. Acheson, George Shiras, Jr. and A. M. Brown—some of the most distinguished names known to the profession.

The resolutions adopted were as follows:

"WHEREAS, The Pittsburgh Bar have learned with sincere sorrow of the sudden demise of the Hon. Thomas Williams, and are desirous as a body to pay a proper tribute to his memory as one of its most worthy and distinguished members, therefore, in token of its purpose publicly to honor his name as an eminent lawyer, a good citizen and a cherished friend.

Resolved, That his purity in all the relations of private life, his unsullied reputation as a lawyer, his unassailed integrity as a public servant for many years in the discharge of responsible duties, alike entitle him to the commendation of his brethren of the Bar, the grateful recollection of the community and a place in history among the statesmen of his native State and this Nation

Resolved, That his long and successful career at the bar was full of honor, shedding lustre upon the profession he adorned by his great and varied learning, his untiring study, and a scrupulous regard for its high and ennobling duties.

Resolved, That in him were united an exact knowledge of the law, scholarly acquirements and literary tastes of a high order, and a conceded ability to both write and speak with a rare beauty and masterly power seldom falling to the lot of any man, all combining to make him greatly to be admired and long remembered.

Resolved, That whether considered as a lawyer, a statesman, or a citizen, his life, now closed, is worthy of emulation; and may hereafter be fitly spoken of by his kindred and friends as full of honor, goodness and truth, and his tomb as holding imperishably even in death, one of Fame's noblest sons.

Resolved, That we deeply sympathize with his bereaved family in this the hour of their sore affliction, and kindly tender them our condolence in the loss of an affectionate husband, an indulgent father, and a beloved brother.

Resolved, That the Bar in a body proceed from the Court House to the family residence, to attend the funeral on Satur-

¹ The Gazette of July 8, 1872.

day, and that a committee of three be appointed to present a copy of these resolutions to the family.

Resolved, That the several courts of this county be requested by the same committee to order the proceedings of this meeting to be spread at length on their minutes.¹

On Saturday morning the Grand Jury adjourned out of respect, after passing resolutions, in which they said: "In the death of this estimable citizen we have lost a valued friend." In the United States District Court, George Shiras, Esq., announced his decease, and, after a review of his life and also an address by Judge McCandless, who spoke at length upon the virtues of Mr. Williams, of both head and heart, the court also adjourned out of respect to his memory. At three o'clock in the afternoon, after services conducted by Rev. Dr. Jacobus, at the residence, his remains, accompanied by Messrs. John Morrison, Thomas M. Howe, Judge McCandless, Judge Hampton, Judge Veech, Thomas MacConnell, Jas. I. Kuhn, Wm. M. Darlington, S. H. Geyer, A. S. Bell, James O'Hara and Josiah King, as pallbearers, and the judges and attorneys of the several courts in a body on foot, accompanied the carriages to the intersections of Penn and Sixth streets, where they stood uncovered while the procession passed, and then retired. The services at the tomb in Allegheny County, Pittsburgh, were conducted by Rev. Dr. Preston, and all that was mortal of Thomas Williams was laid to rest.²

On Monday (June 10, 1872) there appeared in the Pittsburgh *Post*, probably the most notable and most widely copied editorial on Mr. Williams that appeared. It was all the more notable, because the *Post* had been one of his most distinguished opponents in public life. "Not less sincerely," it began, "than those who during his life were his personal and political friends, do we deplore the calamity which this community has sustained in the death of Mr. Williams.—He was the last of the class of thoroughbred old fashioned lawyers, who

¹ A photographic reproduction of the engrossed resolutions appears herewith.

² Their pastor, the Rev. Dr. S. F. Scovel, of the First Presbyterian Church, was abroad at the time.

early gave to the Bar of Western Pennsylvania the lustre of powerful intellect, deep learning, unflinching fidelity and boundless devotion. And it may truly be said that Mr. Williams was at least the equal of the brightest and best of this class.—For many years he was the leading counsel in the most important causes, especially in the Supreme Court. And the published reports of many of his arguments exhibit legal learning and powerful reasoning which will long command the respect of the profession. But forensic fame is in its nature evanescent. The voice of the advocate, of immense importance at the moment, soon becomes, (in the popular mind) but the vague traditions of indefinite power.—Mr. Williams, in another sphere has left a permanent impress upon his country. He was a leader amongst those who nearly forty years ago established as the permanent policy of Pennsylvania protection to American industry. His numerous speeches on the tariff, especially when a candidate in 1838 for the State Senate were recognized at the time as the most luminous and convincing, and although these speeches may have been generally forgotten, their effect remains, and it is apparent in subsequent legislation.—He was the author of the Tenure-of-Office bill, and the argument by which he supported it, is conclusive evidence that he was a great constitutional lawyer.—The amendment to the Constitution of Pennsylvania prohibiting municipal subscriptions to corporations was the sole work of Williams. From the beginning he had opposed all such subscriptions as illegal and impolitic, and subsequently disputed their validity. Throughout all the controversies on this subject Mr. Williams proved his consistency and integrity. He alone could have raised these questions and conducted this contest, for he alone could have brought to it such aid of personal purity, intellectual power and unflinching courage. The constitutional amendment may fairly be considered the popular approval of his policy.

“At the commencement of the rebellion,” the *Post* continues, “Mr. Williams instantly and ardently advocated the most vigorous measures. His voice helped to arouse the people of Pennsylvania to the magnitude of

the danger and the immense efforts necessary to repel it, and its effect was soon apparent in the men and money placed at the disposal of the Federal Government.—The impeachment of President Johnson placed Mr. Williams as one of the managers in a conspicuous National position where he maintained and enhanced the reputation which he had already obtained in a more limited sphere—of his effort in that case—it is enough to say that the leading counsel of the President pronounced it the ablest argument of the ablest lawyer concerned against him.—In municipal affairs Mr. Williams always took a deep interest and an active part. His tendencies were decidedly conservative, and he vigorously resisted all schemes which involved needless expenditures, and especially those in which there was a suspicion of public plunder.—He was an accomplished scholar. His studies embraced almost the entire range of human knowledge. His intellectual thirst was such that, only the year before his death he acquired a new language, that he might read German works in the original. His pen was prolific, and we yet hope that his miscellaneous writings may be collected and placed in permanent form. We can refer but to one of them—the eulogium delivered before the Senate and House of Representatives of Pennsylvania on President Harrison, which is justly placed by the side of Lee's eulogium on Washington. Mr. Williams' character was remarkable in this, that with immense intellectual power, he often exhibited a child-like credulity and simplicity. Perfectly pure himself he was liable to be the victim of misplaced confidence. The consequence was that his political position was sometimes successfully assailed by men infinitely his inferiors. His sensitive honor, disdain of subterfuge and abhorrence of meanness, really unfitted him for such contests with the vulgar. If he had lived in the early days of the Republic, when virtue held just sway, he would have been among the great lights and leaders of the nation.

“The mournful tribute to the private virtues and graces of Mr. Williams,” the *Post* concludes, “is universal and unfeigned among all who knew him. Gentle, genial and tender, he infused happiness in every circle into



BUST OF MR. WILLIAMS, BY MILLS
Half-tone of original in possession of the
Pennsylvania Historical Society

which he entered. Amongst those who followed him to the grave were many, especially of his own profession, who will cherish his memory in grateful remembrance for spontaneous kindness and invaluable aid in their early struggles. If propriety would permit us to raise the veil and exhibit his domestic life, it would present a touching and beautiful picture. But we forbear. The sanctity of family sorrow is not to be invaded even in the case of the most tender husband, affectional father and faithful friend.—This brief and imperfect notice we have felt to be due to the memory of an eminent citizen, whose death is a public loss."¹

Nearly forty years of public life were ended, covering that great period from Jackson to Grant, in which were grown to maturity most of the far-reaching and dominant policies of to-day. Viewed now, through the vista of over thirty more years, in which these principles have had opportunity to develop and prove their permanence; viewed in the light of Pennsylvania's transformation from a Democratic stronghold into the very keystone of the tariff and Republican policies that arch America to-day; viewed from the battlefield where corporate industrial and financial power is being subordinated to public law; and viewed in the presence of that sensitive popular jealousy of the delicate balance that must always exist between the great national functions of lawmaking and the executive, as well as that of the high interpreters between them—Williams' lifework looms up with all the significance that attaches to what is based upon great, vital and permanent principles. He was a maker of those great constructive policies which are now known to history as Whig and Republican, and he was a maker with power in a strategic place. He was also one of the first and most effective of the fighters on the field where even now is raging the contest to control corporate giants and make them a blessing and not a curse to the land. In this, as in most other thought, he had the instinct for the eternal; he scented the permanent afar off; his intuitions reached beyond his times. He was not infrequently

¹ This sketch was the one usually reprinted in most of the eastern papers. The *Daily Post* was "The Only Democratic Daily Paper in Western Pennsylvania."

in the minority in order that he might become a prophet of the great permanent majority. His thought, opposed for the moment as radical and unwise, was, in due time, placed in constitutions. Therefore, although he was a jurist and a statesman, he was, first of all, the poet-orator, a voice of those higher thoughts and inspirations of men, which remain after the clouds and darkness have cleared away.

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